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Legislative History – Montana Session Law

Chapter: 283 Session L: 2019

Bill Number: HB 617

Checklist of Bill History

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee: Business & Labor

Hearing Date(s): 2/26/2019

Committee Report: 2/26/2019

Senate

Committee: Business, Labor & Economic
Affairs

Hearing Date(s): 3/19/2019

Committee Report: 3/27/2019

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 11/6/2024

Notes: All hearings and discussions can be found on the Legislature's website here:

<https://sg001-harmony.sliq.net/00309/Harmony/en>

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
05/06/19	Chapter Number Assigned				
05/03/19	(H) Signed by Governor				
05/01/19	(H) Transmitted to Governor				
04/30/19	(S) Signed by President				
04/26/19	(H) Signed by Speaker				
04/13/19	(C) Printed - Enrolled Version Available				
04/13/19	(H) Returned from Enrolling				
04/10/19	(H) Sent to Enrolling				
04/10/19	(H) 3rd Reading Passed as Amended by Senate		96	3	
04/10/19	(H) Scheduled for 3rd Reading				
04/09/19	(H) 2nd Reading Senate Amendments Concurred		96	4	
04/09/19	(H) Scheduled for 2nd Reading				
04/03/19	(S) Returned to House with Amendments				
04/03/19	(S) 3rd Reading Concurred		49	0	
04/03/19	(S) Scheduled for 3rd Reading				
04/01/19	(C) Printed - New Version Available				
04/01/19	(S) 2nd Reading Concurred as Amended		49	0	
04/01/19	(S) 2nd Reading Motion to Amend Carried		49	0	
04/01/19	(S) Scheduled for 2nd Reading				
03/28/19	(C) Printed - New Version Available				
03/28/19	(S) Committee Report--Bill Concurred as Amended	(S) Business, Labor, and Economic Affairs			
03/27/19	(S) Committee Executive Action--Bill Concurred as Amended	(S) Business, Labor, and Economic Affairs	10	0	
03/19/19	(S) Hearing	(S) Business, Labor, and Economic Affairs			
03/09/19	(S) Referred to Committee	(S) Business, Labor, and Economic Affairs			
03/07/19	(S) First Reading				
03/01/19	(H) Transmitted to Senate				
03/01/19	(H) 3rd Reading Passed		97	2	
03/01/19	(H) Scheduled for 3rd Reading				
02/28/19	(H) 2nd Reading Passed		97	3	
02/28/19	(H) Scheduled for 2nd Reading				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/26/19	(H) Committee Report--Bill Passed	(H) Business and Labor			
02/26/19	(H) Committee Executive Action--Bill Passed	(H) Business and Labor	19	0	
02/26/19	(H) Hearing	(H) Business and Labor			
02/23/19	(H) Hearing Canceled	(H) Business and Labor			
02/22/19	(C) Introduced Bill Text Available Electronically				
02/22/19	(H) First Reading	(H) Business and Labor			
02/22/19	(H) Referred to Committee	(H) Business and Labor			
02/22/19	(H) Introduced				
02/22/19	(C) Draft Delivered to Requester				
02/21/19	(C) Draft Ready for Delivery				
02/21/19	(C) Executive Director Final Review				
02/21/19	(C) Draft in Assembly				
02/21/19	(C) Executive Director Review				
02/21/19	(C) Bill Draft Text Available Electronically				
02/21/19	(C) Draft in Final Drafter Review				
02/20/19	(C) Draft in Input/Proofing				
02/20/19	(C) Draft to Drafter - Edit Review [SMH]				
02/20/19	(C) Draft in Legal Review				
02/20/19	(C) Draft Back for Redo				
02/19/19	(C) Draft in Edit				
02/19/19	(C) Draft in Legal Review				
02/19/19	(C) Draft Taken Off Hold				
02/19/19	(C) Draft to Requester for Review				
12/17/18	(C) Draft On Hold				
12/03/18	(C) Draft Request Received				



AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer

data or to write data to a dealer data system to carry out the specified function.

(2) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any authorized dealer personnel acting on behalf of the dealer owner-operator.

(3) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled by a dealer and used by the dealer in its business operations.

(4) "Dealer data vendor" means any dealer management system provider or customer relationship management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer data pursuant to a contract with a dealer.

(5) "Fees" means charges for access to protected dealer data. Fees must be disclosed to the dealer prior to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.

(6) "Protected dealer data" means:

(a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer's dealer data system; or

(b) any other data regarding a dealer's business operations that is stored in the dealer's dealer data system.

(7) "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and any other individual or entity other than the dealer. The term does not include any government entity acting pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the privacy of protected dealer data.

Section 2. Prohibited actions. (1) A third party may not:

(a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of the dealer;

(b) take any action by contract, by technical means, or by any other means that would prohibit or limit a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited

to:

(i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or sharing of protected dealer data or for writing data to a dealer data system;

(ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating into that dealer's dealer data system, or placing unreasonable restrictions on integration by any such authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of restrictions include but are not limited to:

(A) restrictions on the scope or nature of the data shared with an authorized integrator;

(B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

(C) restrictions or conditions on a third party accessing or sharing protected dealer data or writing data to a dealer data system; and

(D) requiring access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

(c) prohibit or limit a dealer's ability to store, copy, securely share, or use protected dealer data outside the dealer data system in any manner or for any reason; or

(d) permit access to or access protected dealer data without the express written consent of the dealer.

(2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

(3) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data vendor or authorized integrator.

Section 3. Other responsibilities and restrictions. All dealer data vendors and authorized integrators:

- (1) may access, use, store, or share protected dealer data only to the extent permitted in the contract with the dealer;
- (2) must make any agreement regarding access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable no more than 90 days' notice from the dealer;
- (3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including but not limited to:
 - (a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can access and use; and
 - (b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;
- (4) must provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or with whom it has allowed access to protected dealer data; and
- (5) must allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of any protected dealer data.

Section 4. Warranty reimbursement. (1) If a motor vehicle franchisor requires or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the franchisor:

- (a) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as furnished, in an amount equal to the prevailing retail rate charged by the franchisee for such labor or the prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which such labor is rendered or the parts and supplies are furnished other than pursuant to warranty;
- (b) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding

any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

(c) (i) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(ii) The submission required under subsection (1)(c)(i) may consist of:

(A) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(B) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(C) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

(4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) or (3) if the franchisee seeks to be compensated under subsection (1).

(5) (a) Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

(b) As used in this section, a "qualified repair" does not include:

(i) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts,

nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

(ii) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;

(iii) repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;

(iv) repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns, or are otherwise subject to motor vehicle franchisor discounts;

(v) repairs of motor vehicles owned by the dealer or an employee of the dealer;

(vi) installations of accessories;

(vii) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;

(viii) safety or vehicle emission inspections required by law;

(ix) vehicle reconditioning;

(x) parts sold at wholesale;

(xi) repairs using after-market parts; or

(xii) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2), unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

(b) The objection must contain:

(i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

(ii) evidence substantiating each stated reason;

(iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

(iv) a proposed adjusted retail labor rate or retail parts rate, as applicable.

(c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup,

except in connection with litigation.

(d) A revision or supplement to a submission to correct or clarify the submission does not constitute a new submission for any purpose, including but not limited to that of subsection (9).

(7) In a judicial proceeding or a department proceeding involving an application or enforcement of the provisions of 61-4-203, 61-4-204, and 61-4-210(4):

(a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle franchisee was materially inaccurate;

(b) the motor vehicle franchisor has the burden of proof; and

(c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt of the franchisee's submission.

(8) A motor vehicle franchisor may not directly or indirectly:

(a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means or methodology other than as prescribed in 61-4-204; or

(ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a process to establish or alter that labor rate or parts markup, including but not limited to:

(A) substituting any other purported qualified repair order sample for that submitted by a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup, or the use, for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for purposes of establishing or increasing its labor rate; or

(B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction calculations;

(b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

(c) establish or implement a special part number for parts used in warranty work if it results in lower compensation to the franchisee than as calculated in this section;

(d) require, influence, or attempt to influence a franchisee to implement or change the prices for which

it sells parts or labor in retail repairs;

(e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation pursuant to this section, or dissuade or discourage the franchisee from doing so, including but not limited to:

(i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations to the franchisee under this section;

(ii) acting or failing to act, other than in good faith;

(iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee;

(iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and consistent manner among the franchisor's franchisees in this state; or

(v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related audit; or

(e) implement or continue a policy, procedure, or program to any of its franchisees for compensation that is inconsistent with this section.

(9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsection (1)(d):

(a) its warranty labor rate more than once in a 12-month period; and

(b) its warranty parts markup more than once in a 12-month period.

(10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the recreational motor vehicle franchisor.

(11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the greater of:

(a) the amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee;

(b) the cost of the part shown in a current or prior established price schedule of the franchisor; or

(c) the cost of a substantially identical part shown in a current or prior established price schedule of the franchisor.

(12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

(b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly performed, or that the parts or labor were unnecessary to correct the defective condition.

(c) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of submission of the claim.

(d) A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

(e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the claim.

(13) For the purposes of this section, the following definitions apply:

(a) "Labor" means work or service performed, including that of a diagnostic character, with respect to repair of a motor vehicle.

(b) "Parts" means original or replacement parts, accessories, and components with respect to a motor vehicle, including engine, transmission, and other parts assemblies.

(c) "Qualified repair" means a repair to a vehicle that:

(i) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having exceeded the time or mileage limit of the warranty;

(ii) does not otherwise constitute warranty work; and

(iii) does not constitute any of the work encompassed by subsection (5)(b).

(d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair

or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price, and in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified pre-owned warranty, in each case issued or administered by a motor vehicle franchisor.

Section 5. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Cancellation" or "canceled" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

~~(+)~~(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

~~(2)~~(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(3)~~(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(4)~~(5) "Inventory" means:

- (a) farm implements, machinery, attachments, and repair parts;
- (b) industrial and construction equipment and repair parts;
- (c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;
- (d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;
- (e) snowmobiles, as defined in 23-2-601, and repair parts;
- (f) off-highway vehicles, as defined in 23-2-801, and repair parts; and
- (g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

~~(5)~~(6) "Net cost" means:

- (a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and
- (b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

~~(6)~~(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

~~(7)~~(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 6. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~If a retailer enters into~~ Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

- (a) 100% of the net cost of all new, ~~unused~~, undamaged, and complete inventory items held by the dealer at the time of cancellation, including vehicles with less than 1,000 miles on the odometer, plus cost of

freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) ~~If a wholesaler enters into~~ Upon cancellation of a written distribution contract ~~and either the wholesaler, manufacturer, or distributor cancels the contract,~~ entered into between a wholesaler and a manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation, including vehicles with less than 1,000 miles on the odometer; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the ~~return of the inventory items to the wholesaler, manufacturer, or distributor~~ retailer's or wholesaler's repurchase request. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

(4) A manufacturer or distributor has 30 days from the date of the repurchase request to complete, at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts."

Section 7. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

- (1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;
- (2) any repair part that is in a broken or damaged package;
- (3) any single repair part that is priced as a set of two or more items;
- (4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;
- (6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;
- (7) any inventory item other than a repair part that is not in essentially new, ~~unused~~, undamaged, and complete condition;
- (8) any repair part that is not in new, unused, or undamaged condition;
- (9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;
- (10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and
- (11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702."

Section 8. Section 30-11-705, MCA, is amended to read:

"30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools.

Upon the ~~termination, cancellation, nonrenewal, or refusal to continue~~ of a dealership contract, by a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or distributor, credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, ~~shall pay the retailer an amount equal to:~~

- (1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, ~~if the acquisition of~~

acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) if ~~the~~ a sign, item of special equipment, or special tool has a service agreement or if the sign, item of special ~~tools are~~ equipment, or special tool is leased by the retailer, the amounts ~~that are~~ required to ~~terminate~~ be paid upon termination of the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and loading the signs, special equipment, and special tools."

Section 9. Section 30-11-712, MCA, is amended to read:

"30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for ~~100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs;~~

(1) all sums required under this part;

(2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the 31st day after the repurchase request;

(3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this section, at a rate calculated pursuant to 25-9-205 until paid; and

(4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses."

Section 10. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any

agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special equipment, or special tools; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in ~~30-11-702~~ this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in ~~30-11-702~~ this part with regard to any inventory ~~not covered by contract, parts, signs,~~ special equipment, or special tools that are not included in contract remedies, provided that the retailer or wholesaler is not entitled to recover more than one time on any claim of loss or damage."

Section 11. Section 61-4-132, MCA, is amended to read:

"61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a ~~retiring,~~ deceased, or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement if upon the retiring dealer or the family member gives of a deceased or incapacitated dealer giving the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of the intention to succeed the dealer in the ownership or operation of the dealership do so within 120 days of prior to the dealer's expected date of retirement or within 120 days after the death or incapacity ~~and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer of the dealer. The manufacturer, factory branch, distributor, or importer may refuse to honor the notice of succession only for good cause in the manner provided for in 61-4-133.~~

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, ~~upon~~ on request, personal and financial data that is reasonably necessary to determine whether the succession should be honored. The designated family member must meet the manufacturer's, factory branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer. If the designated family member lacks experience required to meet those requirements, then the manufacturer shall allow the successor a reasonable amount of time to meet those requirements provided that during the period, the successor employs an individual who is qualified and experienced as a general manager to manage the day-to-day operations of the motor vehicle dealership."

Section 12. Section 61-4-133, MCA, is amended to read:

"61-4-133. Refusal to honor succession to ownership -- notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member ~~of a deceased or incapacitated dealer~~ under the existing franchise agreement as provided for in this part, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member and the department or if the department rules in favor of the designated family member ~~complainant~~ in a hearing held pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

(4) In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family member's succession to the ownership and operation of the dealership without complying with this part, the designated family member may commence a proceeding before the department for declaratory judgment against the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a manufacturer, factory branch, distributor, or importer."

Section 13. Section 61-4-134, MCA, is amended to read:

"61-4-134. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory ~~branch~~ branch's, distributor's, or importer's refusal to honor the family member's succession to the ownership and operation of the dealership may, within the 90-day period, ~~file with~~

~~the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance~~ file a written complaint with the department for a hearing and determination by the department as to whether good cause exists for refusal to honor the designated family member's succession to the operation and ownership of the dealership.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the designated family member failed to comply with the provisions of 61-4-132(2) or that the succession would be detrimental to the public interest ~~or to the representation of the manufacturer, factory branch, distributor, or importer.~~

(3) The franchise agreement must continue in effect until the final adjudication by the department on the ~~verified complaint~~ written complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during adjudication by the department and the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the ~~complainant~~ designated family member an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 14. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of

domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. A manufacturer may not refuse a dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere allegations of the complaint without a reasonable investigation of the facts and determination that the dealer failed to perform the dealer's delivery and preparation obligations as required by this subsection or otherwise violated a legal duty owed to the claimant or manufacturer. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations as provided in this part ~~at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.~~

(5) ~~(a)~~ All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, and claims made for incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, unless the claim is properly disapproved, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

~~(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.~~

~~—— (c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:~~

~~—— (i) the claim was false or fraudulent;~~

~~—— (ii) the repairs were not properly made; or~~

~~—— (iii) the repairs were not necessary to correct the defective condition.~~

~~—— (d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.~~

(6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value for which the dealer is otherwise ~~eligible~~ entitled under a sales promotion, program, or contest, and may not prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign country if the motor vehicle is titled in the United States.

~~(7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer~~

~~any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts.~~

~~(8)~~(7) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or charge-backs for customer or dealer incentives.

~~(9)~~(8) A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in ~~subsection (5)(d)~~ [section 4(12)(d)], regardless of whether the denial or charge-back was a direct or an indirect transaction.

~~(10)~~(9) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if provided by the franchise agreement, to submit a claim for payment or compensation under the program.

~~(11)~~(10) Notwithstanding the terms of a franchise agreement or other contract with a dealer ~~and except as provided in subsection (5)(c)~~, after the expiration of 1 year after the date of payment of a motor vehicle claim or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may not:

(a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the franchisor under an incentive program;

(b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) audit the records of a dealer to determine compliance with the terms of an incentive program.

~~(12)~~(11) Subsection ~~(11)~~(10) does not prohibit a franchisor from making charge-backs to a dealer for fraud at any time as permitted by ~~subsection (5)(c)~~ 27-2-203.

~~(13)~~(12) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

(13) Any violation of this section constitutes a prohibited practice."

Section 15. Section 61-4-205, MCA, is amended to read:

"61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a

franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest.

(3) (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(b) The notice to be filed with the department of a franchisor's intention to enter into a franchise for additional representation of the same line-make must name the proposed additional franchisee and must identify by legal description or street address the additional location in the community. A change in the identity of the proposed additional franchisee or of the additional location in the community may only be accomplished by the withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a franchise for additional representation of the same line-make in the same community may be made by a franchisor within 3 calendar years of the date of final disposition of a notice of intention.

(c) If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and consultant fees incurred in resisting the proceeding.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of

business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

(a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

(b) ceasing production of the line-make; or

(c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

(9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

(i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

(ii) the higher of the fair market value of the franchise on the following dates:

(A) the effective date of the termination, cancellation, or failure to renew;

(B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

(C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

(b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

(10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

(11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in

effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 16. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections -- hearing. (1) (a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district

court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the ~~verified~~ written complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 17. Section 61-4-207, MCA, is amended to read:

"61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

(a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

(g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and

(h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

- (a) a change in ownership of the franchisee's dealership;
- (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;
- (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or
- (d) the desire of a franchisor or a franchisor's representative:
 - (i) for greater market penetration; or
 - (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

- (a) amount of business transacted by other existing franchisees of the same line-make in that community;
- (b) investment necessarily made and obligations incurred by other existing franchisees of the same line-make in that community in the performance of their part of their ~~franchises~~ franchise agreements and the date of the investment made and the obligations incurred by the existing franchisees in relation to the date of appointment of the additional franchisee; and
- (c) whether the other existing franchisees of the same line-make in that community are substantially compliant with reasonable manufacturer requirements for providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment, replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make; and
- (d) whether the demographic characteristics, including population, of that community have changed sufficiently since the appointment of the other existing franchisees to support the economic viability of both the other existing franchisees and the additional franchisee."

Section 18. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [section 4].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0617, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 617
INTRODUCED BY B. USHER

AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HOUSE BILL NO. 617

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer

1 data or to write data to a dealer data system to carry out the specified function.

2 (2) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any
3 authorized dealer personnel acting on behalf of the dealer owner-operator.

4 (3) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled
5 by a dealer and used by the dealer in its business operations.

6 (4) "Dealer data vendor" means any dealer management system provider or customer relationship
7 management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer
8 or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer
9 data pursuant to a contract with a dealer.

10 (5) "Fees" means charges for access to protected dealer data. Fees must be disclosed to the dealer prior
11 to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.

12 (6) "Protected dealer data" means:

13 (a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a
14 consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer's
15 dealer data system; or

16 (b) any other data regarding a dealer's business operations that is stored in the dealer's dealer data
17 system.

18 (7) "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and
19 any other individual or entity other than the dealer. The term does not include any government entity acting
20 pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle
21 manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity
22 acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the
23 privacy of protected dealer data.

24
25 **NEW SECTION. Section 2. Prohibited actions.** (1) A third party may not:

26 (a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without
27 the express written consent of the dealer;

28 (b) take any action by contract, by technical means, or by any other means that would prohibit or limit
29 a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited
30 to:

1 (i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or
2 sharing of protected dealer data or for writing data to a dealer data system;

3 (ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from
4 integrating into that dealer's dealer data system, or placing unreasonable restrictions on integration by any such
5 authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of
6 restrictions include but are not limited to:

7 (A) restrictions on the scope or nature of the data shared with an authorized integrator;

8 (B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

9 (C) restrictions or conditions on a third party accessing or sharing protecting dealer data or writing data
10 to a dealer data system; and

11 (D) requiring access to sensitive, competitive, or other confidential business information of a third party
12 as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

13 (c) prohibit or limit a dealer's ability to store, copy, securely share, or use protected dealer data outside
14 the dealer data system in any manner or for any reason; or

15 (d) permit access to or access protected dealer data without the express written consent of the dealer.

16 (2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service
17 provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those
18 responsibilities.

19 (3) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by
20 the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the
21 written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation
22 regarding the protection of protected dealer data or results in any liability as a consequence of such actions by
23 the dealer.

24 (4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or
25 authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions
26 of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting
27 any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence
28 of such actions by the dealer data vendor or authorized integrator.

29
30 NEW SECTION. **Section 3. Other responsibilities and restrictions.** All dealer data vendors and

1 authorized integrators:

2 (1) may access, use, store, or share protected dealer data only to the extent permitted in the contract
3 with the dealer;

4 (2) must make any agreement regarding access to, sharing or selling of, copying, using, or transmitting
5 protected dealer data terminable no more than 90 days' notice from the dealer;

6 (3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of
7 consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor
8 dealer data vendor or authorized integrator, including but not limited to:

9 (a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data
10 stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can
11 access and use; and

12 (b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant
13 to any written directions of the dealer;

14 (4) must provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or
15 with whom it has allowed access to protected dealer data; and

16 (5) must allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of
17 any protected dealer data.

18
19 **NEW SECTION. Section 4. Warranty labor reimbursement.** (1) If a motor vehicle franchisor requires
20 or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the
21 franchisor:

22 (a) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered
23 and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as
24 furnished, in an amount equal to the prevailing retail rate charged by the franchisee for such labor or the
25 prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which such labor
26 is rendered or the parts and supplies are furnished other than pursuant to warranty;

27 (b) the motor vehicle franchisor may not by agreement, restrictions on reimbursement, or in any other
28 way restrict the nature and extent of the labor to be rendered or the parts to be provided so that the restriction
29 prevents the motor vehicle franchisee from satisfying the warranty by rendering labor in a good and workmanlike
30 manner and providing parts that are required in accordance with generally accepted standards;

(c) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

(d) (i) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(ii) The submission required under subsection (1)(d)(i) may consist of:

(A) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(B) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(C) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

(4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (3) or this subsection if the franchisee seeks to be compensated under subsection (1).

(5) (a) Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

1 (b) As used in subsection (1)(a), a "qualified repair" does not include:

2 (i) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts,
3 nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

4 (ii) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but
5 not limited to vehicle alignments and tire or wheel rotations;

6 (iii) repairs for which volume discounts have been negotiated with government agencies, insurers,
7 extended warranty or service contract providers, or other third-party payors;

8 (iv) repairs that are the subject of motor vehicle franchisor special events, promotions, or service
9 campaigns, or are otherwise subject to motor vehicle franchisor discounts;

10 (v) repairs of motor vehicles owned by the dealer or an employee of the dealer;

11 (vi) installations of accessories;

12 (vii) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft,
13 or owner, operator, or third-party negligence or deliberate acts;

14 (viii) safety or vehicle emission inspections required by law;

15 (ix) vehicle reconditioning;

16 (x) parts sold or labor performed at wholesale;

17 (xi) repairs using after-market parts; or

18 (xii) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

19 (6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into
20 effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2), unless
21 within the 30-day period the franchisor contests the declaration by written notice of objection, received by the
22 motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

23 (b) The objection must contain:

24 (i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

25 (ii) evidence substantiating each stated reason;

26 (iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

27 (iv) a proposed adjusted retail labor rate or retail parts rate, as applicable, based on the qualified repair
28 orders submitted by the franchisee.

29 (c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle
30 franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After

1 submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any
2 element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup,
3 except in connection with litigation.

4 (d) A revision or supplement to a submission to correct or clarify the submission does not constitute a
5 new submission for any purpose, including but not limited to that of subsection (9).

6 (7) In a judicial proceeding or a department proceeding involving an application or enforcement of the
7 provisions of 61-4-203, 61-4-204, and 61-4-210(4):

8 (a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle
9 franchisee was materially inaccurate;

10 (b) the motor vehicle franchisor has the burden of proof; and

11 (c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt
12 of the franchisee's submission.

13 (8) A motor vehicle franchisor may not directly or indirectly:

14 (a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means
15 or methodology other than as prescribed in 61-4-204; or

16 (ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a
17 process to establish or alter that labor rate or parts markup, including but not limited to:

18 (A) substituting any other purported qualified repair order sample for that submitted, or submittable, by
19 a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor
20 rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup, or the use,
21 for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for
22 purposes of establishing or increasing its labor rate; or

23 (B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly
24 burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction
25 calculations;

26 (b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers
27 for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge
28 to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

29 (c) establish or implement a special part number for parts used in warranty work if it results in lower
30 compensation to the franchisee than as calculated in this section;

1 (d) require, influence, or attempt to influence a franchisee to implement or change the prices for which
2 it sells parts or labor in retail repairs;

3 (e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation
4 pursuant to this section, or dissuade or discourage the franchisee from doing so, including but not limited to:

5 (i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations
6 to the franchisee under this section;

7 (ii) acting or failing to act, other than in good faith;

8 (iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this
9 section to a franchisee;

10 (iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive
11 regarding compensation due under this section other than in a uniform and consistent manner among the
12 franchisor's franchisees in this state; or

13 (v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related
14 audit; or

15 (e) implement or continue a policy, procedure, or program to any of its franchisees for compensation that
16 is inconsistent with this section.

17 (9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsection
18 (1)(d):

19 (a) its warranty labor rate more than once in a 12-month period; and

20 (b) its warranty parts markup more than once in a 12-month period.

21 (10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale
22 cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the
23 recreational motor vehicle franchisor.

24 (11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at
25 a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's
26 cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the
27 fair wholesale value of the part. The fair wholesale value of the part is the greater of:

28 (a) the amount the franchisee paid for the part or a substantially identical part if already owned by the
29 franchisee;

30 (b) the cost of the part shown in a current or prior established price schedule of the franchisor; or

1 (c) the cost of a substantially identical part shown in a current or prior established price schedule of the
2 franchisor.

3 (12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and
4 labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

5 (b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the
6 claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified
7 in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back
8 to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly
9 performed, or that the parts or labor were unnecessary to correct the defective condition.

10 (c) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the
11 dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services
12 in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of
13 submission of the claim.

14 (d) A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a
15 specific claim processing requirement, such as a clerical error or other administrative technicality that does not
16 put into question the legitimacy of the claim.

17 (e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the
18 claim.

19 (13) For the purposes of this section, the following definitions apply:

20 (a) "Labor" means work or service performed, including that of a diagnostic character, with respect to
21 repair of a motor vehicle.

22 (b) "Parts" means original or replacement parts, accessories, and components with respect to a motor
23 vehicle, including engine, transmission, and other parts assemblies.

24 (c) "Qualified repair" means a repair to a vehicle that:

25 (i) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having
26 exceeded the chronological or mileage limit of the warranty;

27 (ii) does not otherwise constitute warranty work; and

28 (iii) does not constitute any of the work encompassed by subsection (5)(b).

29 (d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair
30 or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price, and in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified pre-owned warranty, in each case issued or administered by a motor vehicle franchisor.

Section 5. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Cancellation" or "canceled" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

~~(1)~~(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

~~(2)~~(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(3)~~(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(4)~~(5) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

~~(5)~~(6) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

~~(6)~~(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

~~(7)~~(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 6. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~If a retailer enters into~~ Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, ~~and either the wholesaler, manufacturer, distributor, or retailer cancels the contract,~~ such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) ~~If a wholesaler enters into~~ Upon cancellation of a written distribution contract ~~and either the wholesaler, manufacturer, or distributor cancels the contract,~~ entered into between a wholesaler and a manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the ~~return of the inventory items to the wholesaler, manufacturer, or distributor~~ retailer's or wholesaler's repurchase request. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

(4) A manufacturer or distributor has 30 days to complete, at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts."

Section 7. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, ~~unused~~, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702."

Section 8. Section 30-11-705, MCA, is amended to read:

"30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools.

Upon the ~~termination, cancellation, nonrenewal, or refusal to continue~~ of a dealership contract, by a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or distributor, credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, ~~shall pay the retailer an amount equal to:~~

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, ~~if the acquisition of~~ acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) if ~~the~~ a sign, item of special equipment, or special tool has a service agreement or if the sign, item

1 ~~of special tools are equipment, or special tool is~~ leased by the retailer, the amounts ~~that are~~ required to terminate
2 be paid upon termination of the service agreement or the lease under the terms of the service or lease
3 agreement; and

4 (3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and
5 loading the signs, special equipment, and special tools."

6
7 **Section 9.** Section 30-11-712, MCA, is amended to read:

8 **"30-11-712. Civil liability.** If any wholesaler, manufacturer, or distributor fails or refuses to repurchase
9 or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special
10 tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for ~~100% of~~
11 ~~the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or~~
12 ~~wholesaler's attorney fees, and court costs;~~

13 (1) all sums required under this part;

14 (2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor
15 plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the
16 31st day after the repurchase request;

17 (3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this
18 section, at the rate of 15% a year until paid; and

19 (4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses."
20

21 **Section 10.** Section 30-11-713, MCA, is amended to read:

22 **"30-11-713. Remedy as supplemental.** (1) The provisions of this part are supplemental to any
23 agreement between:

24 (a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special
25 equipment, or special tools; or

26 (b) the wholesaler and manufacturer or distributor governing the inventory.

27 (2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in
28 ~~30-11-702~~ this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to
29 the remedy provided in ~~30-11-702~~ this part with regard to any inventory ~~not covered by contract, signs, special~~
30 equipment, or special tools, provided that the retailer or wholesaler is not entitled to recover more than one time

1 on any claim of loss or damage."

2

3 **Section 11.** Section 61-4-132, MCA, is amended to read:

4 **"61-4-132. Right of designated family member to succeed in dealership ownership.** (1) Any
5 designated family member of a retiring, deceased, or incapacitated dealer may succeed the dealer in the
6 ownership or operation of the dealership under the existing franchise or distribution agreement if upon the retiring
7 dealer or the family member gives of a deceased or incapacitated dealer giving the manufacturer, factory branch,
8 distributor, or importer of new motor vehicles written notice of the intention to succeed the dealer in the ownership
9 or operation of the dealership ~~do so~~ within 120 days of the dealer's expected date of retirement or the death or
10 incapacity and unless there exists good cause for refusal to honor the succession on the part of the manufacturer,
11 factory branch, distributor, or importer of the dealer. The manufacturer, factory branch, distributor, or importer may
12 refuse to honor the notice of succession only for good cause in the manner provided for in 61-4-133.

13 (2) The manufacturer, factory branch, distributor, or importer may request, and the designated family
14 member shall provide, ~~upon~~ on request, personal and financial data that is reasonably necessary to determine
15 whether the succession should be honored. The designated family member must meet the manufacturer's, factory
16 branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer or shall
17 employ an individual who is qualified and experienced as a general manager to manage the day-to-day
18 operations of the motor vehicle dealership."

19

20 **Section 12.** Section 61-4-133, MCA, is amended to read:

21 **"61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer,
22 factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the
23 ownership and operation of a dealership by a designated family member ~~of a deceased or incapacitated dealer~~
24 under the existing franchise agreement as provided for in this part, the manufacturer, factory branch, distributor,
25 or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer
26 in the ownership and operation of the dealership, serve upon the designated family member and the department
27 notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with
28 the dealership no sooner than 90 days from the date the notice is served.

29 (2) The notice must state the specific grounds for the refusal to honor the succession and of its intent
30 to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the

1 notice is served.

2 (3) If notice of refusal and discontinuance is not timely served upon the designated family member and
3 the department or if the department rules in favor of the designated family member complainant in a hearing held
4 pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise
5 permitted by law.

6 (4) In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family
7 member's succession to the ownership and operation of the dealership without complying with this part, the
8 designated family member may commence a proceeding before the department for declaratory judgment against
9 the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right
10 to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the
11 designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a
12 manufacturer, factory branch, distributor, or importer."

13

14 **Section 13.** Section 61-4-134, MCA, is amended to read:

15 **"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who receives
16 notice of the manufacturer's, factory ~~branch~~ branch's, distributor's, or importer's refusal to honor the family
17 member's succession to the ownership and operation of the dealership may, within the 90-day period, ~~file with~~
18 ~~the department a verified complaint for a hearing and determination by the department on whether good cause~~
19 ~~exists for refusal and discontinuance~~ file a written complaint with the department for a hearing and determination
20 by the department as to whether good cause exists for refusal to honor the designated family member's
21 succession to the operation and ownership of the dealership.

22 (2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by
23 showing that the designated family member failed to comply with the provisions of 61-4-132(2) and that the
24 succession would be detrimental to the public interest or to the representation of the manufacturer, factory
25 branch, distributor, or importer pursuant to 61-4-206 and 61-4-207.

26 (3) The franchise agreement must continue in effect until the final adjudication by the department on the
27 ~~verified complaint~~ written complaint and the exhaustion of all appellate remedies available to the designated
28 family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall
29 abide by the terms of the franchise agreement and the laws of Montana during adjudication by the department
30 and the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the ~~complainant~~ designated family member an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 14. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and

1 the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the
2 manufacturer constitute the manufacturer's product or warranty liability only. A manufacturer may not refuse a
3 dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging
4 manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere
5 allegations of the complaint without a thorough investigation of the facts and determination that the dealer failed
6 to perform the dealer's delivery and preparation obligations as required by this subsection or otherwise violated
7 a legal duty owed to the claimant. However, this section may not affect the obligations of new motor vehicle
8 dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard
9 to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational
10 vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the
11 manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer
12 who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation
13 obligations as provided in this part ~~at the same rate and time the dealer charges to its retail customers for~~
14 ~~nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide~~
15 ~~manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.~~

16 (5) ~~(a)~~ All claims made by the dealer pursuant to this ~~section~~ part for compensation for delivery,
17 preparation, warranty, and recall service, including labor, parts, and other expenses, and claims made for
18 incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that
19 a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

20 ~~(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim~~
21 ~~that has not been disapproved in writing within 30 days of having been received must be considered approved,~~
22 ~~and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for~~
23 ~~a period of 12 months following the payment of the claim.~~

24 ~~———— (c) A claim that has been approved and paid may not be charged back to the dealer unless the~~
25 ~~manufacturer proves that:~~

26 ~~———— (i) the claim was false or fraudulent;~~

27 ~~———— (ii) the repairs were not properly made; or~~

28 ~~———— (iii) the repairs were not necessary to correct the defective condition.~~

29 ~~———— (d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the~~
30 ~~dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services~~

1 in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim
2 based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a
3 clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

4 (6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver
5 motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value
6 for which the dealer is otherwise ~~eligible~~ entitled under a sales promotion, program, or contest, and may not
7 prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a
8 motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have
9 reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption
10 that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign
11 country if the motor vehicle is titled in the United States.

12 ~~(7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for~~
13 ~~warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer~~
14 ~~any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including~~
15 ~~motor vehicles and parts.~~

16 ~~(8)(7)~~ A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity
17 of paid claims or charge-backs for customer or dealer incentives.

18 ~~(9)(8)~~ A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back
19 to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental
20 failure as set forth in ~~subsection (5)(d)~~ [section 4(12)(d)], regardless of whether the denial or charge-back was
21 a direct or an indirect transaction.

22 ~~(10)(9)~~ A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if
23 provided by the franchise agreement, to submit a claim for payment or compensation under the program.

24 ~~(11)(10)~~ Notwithstanding the terms of a franchise agreement or other contract with a dealer ~~and except~~
25 ~~as provided in subsection (5)(e)~~, after the expiration of 1 year after the date of payment of a motor vehicle claim
26 or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may
27 not:

28 (a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved
29 and paid by the franchisor under an incentive program;

30 (b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value

1 awarded to the dealer under an incentive program; or

2 (c) audit the records of a dealer to determine compliance with the terms of an incentive program.

3 ~~(12)(11)~~ Subsection ~~(11)(10)~~ does not prohibit a franchisor from making charge-backs to a dealer for
4 fraud at any time as permitted by ~~subsection (5)(c)~~ this section.

5 ~~(13)(12)~~ The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the
6 manufacturer's delivery and preparation requirements indicating that each of those requirements has been
7 performed.

8 (13) Any violation of this section constitutes a prohibited practice."

9
10 **Section 15.** Section 61-4-205, MCA, is amended to read:

11 **"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions,
12 or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a
13 franchise unless the franchisor has cause for termination or noncontinuance.

14 (2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor
15 vehicle dealership in any community in which the same line-make is then represented unless there is good cause
16 for an additional new motor vehicle dealership under a franchise and it is in the public interest.

17 (3) (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise
18 establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than
19 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of
20 intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the
21 same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor
22 until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This
23 section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects
24 voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

25 (b) The notice to be filed with the department of a franchisor's intention to enter into a franchise for
26 additional representation of the same line-make must name the proposed additional franchisee and must identify
27 by legal description or street address the additional location in the community. A change in the identity of the
28 proposed additional franchisee or of the additional location in the community may only be accomplished by the
29 withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a
30 franchise for additional representation of the same line-make in the same community may be made by a

1 franchisor in a 3-calendar-year period.

2 (c) If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding
3 under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to
4 recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and
5 consultant fees incurred in resisting the proceeding.

6 (4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall,
7 within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the
8 notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not
9 continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice
10 must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business
11 of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of
12 business of each recipient and to the statutory agent of each corporate recipient. The department may also give
13 a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

14 (5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor
15 may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial
16 and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new
17 motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

18 (6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the
19 sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer
20 to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership
21 in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied
22 or the new owner is unable to obtain a license under the laws of this state.

23 (7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal
24 to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a
25 community where the same line-make is then represented, without first complying with the provisions of this part,
26 a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in
27 the business of selling new motor vehicles manufactured or distributed by that franchisor.

28 (8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's
29 franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders
30 itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under

1 a franchise agreement by:

2 (a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution
3 of the line-make covered by the franchise agreement;

4 (b) ceasing production of the line-make; or

5 (c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

6 (9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the
7 affected dealer in an amount equal to the greater of:

8 (i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination,
9 cancellation, or failure to renew; or

10 (ii) the higher of the fair market value of the franchise on the following dates:

11 (A) the effective date of the termination, cancellation, or failure to renew;

12 (B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

13 (C) the day prior to the date on which the franchisor announces the action that results in the termination,
14 cancellation, or failure to renew.

15 (b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the
16 affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on
17 compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to
18 renew, an affected dealer may bring an action for a determination of the amount of compensation due and for
19 recovery of that amount, plus costs and attorney fees.

20 (10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original
21 manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends
22 to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the
23 original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on
24 substantially similar terms and conditions.

25 (11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to
26 subsection (8) shall:

27 (a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue
28 servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any
29 goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than
30 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 16. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections -- hearing. (1) (a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the ~~verified~~ written complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 17. Section 61-4-207, MCA, is amended to read:

"61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

(a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified

1 management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold
2 at retail by the franchisee and any other new motor vehicle of the same line-make;

3 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee
4 if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

5 (g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the
6 written and uniformly applied requirements of the franchise that are determined by the department to be
7 reasonable and material; and

8 (h) the enforceability of the franchise from a public policy standpoint, including issues of the
9 reasonableness of the franchise's terms and the parties' relative bargaining power.

10 (2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do
11 not constitute good cause for the termination or noncontinuance of a franchise:

12 (a) a change in ownership of the franchisee's dealership;

13 (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part,
14 accessory, or any other commodity or service not ordered by the franchisee;

15 (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to
16 the use or number of franchises or the dealership premises or facilities; or

17 (d) the desire of a franchisor or a franchisor's representative:

18 (i) for greater market penetration; or

19 (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.

20 (3) In determining whether good cause has been established for entering into an additional franchise
21 for the same line-make, the department shall take into consideration the existing circumstances, including but
22 not limited to:

23 (a) amount of business transacted by other existing franchisees of the same line-make in that
24 community;

25 (b) investment necessarily made and obligations incurred by other existing franchisees of the same
26 line-make in that community in the performance of their part of their ~~franchises~~ franchise agreements and the date
27 of the investment made and the obligations incurred by the existing franchisees in relation to the date of
28 appointment of the additional franchisee; and

29 (c) whether the other existing franchisees of the same line-make in that community are substantially
30 compliant with reasonable manufacturer requirements for providing adequate consumer care, including

1 satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment,
2 replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle
3 products of the line-make and whether sufficient qualified management, sales, and trained service personnel to
4 satisfy the reasonable requirements of the manufacturer for the other existing franchisees and the additional
5 franchisee are available in that community; and

6 (d) whether the population and demographic characteristics of that community have changed sufficiently
7 since the appointment of the other existing franchisees to support the economic viability of both the other existing
8 franchisees and the additional franchisee."

9
10 **NEW SECTION. Section 18. Codification instruction.** (1) [Sections 1 through 3] are intended to be
11 codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections
12 1 through 3].

13 (2) [Section 4] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply
14 to [section 4].

15
16 **NEW SECTION. Section 19. Effective date.** [This act] is effective on passage and approval.

17 - END -

HOUSE BILL NO. 617

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer

1 data or to write data to a dealer data system to carry out the specified function.

2 (2) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any
3 authorized dealer personnel acting on behalf of the dealer owner-operator.

4 (3) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled
5 by a dealer and used by the dealer in its business operations.

6 (4) "Dealer data vendor" means any dealer management system provider or customer relationship
7 management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer
8 or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer
9 data pursuant to a contract with a dealer.

10 (5) "Fees" means charges for access to protected dealer data. Fees must be disclosed to the dealer prior
11 to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.

12 (6) "Protected dealer data" means:

13 (a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a
14 consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer's
15 dealer data system; or

16 (b) any other data regarding a dealer's business operations that is stored in the dealer's dealer data
17 system.

18 (7) "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and
19 any other individual or entity other than the dealer. The term does not include any government entity acting
20 pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle
21 manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity
22 acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the
23 privacy of protected dealer data.

24
25 **NEW SECTION. Section 2. Prohibited actions.** (1) A third party may not:

26 (a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without
27 the express written consent of the dealer;

28 (b) take any action by contract, by technical means, or by any other means that would prohibit or limit
29 a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited
30 to:

1 (i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or
2 sharing of protected dealer data or for writing data to a dealer data system;

3 (ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from
4 integrating into that dealer's dealer data system, or placing unreasonable restrictions on integration by any such
5 authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of
6 restrictions include but are not limited to:

7 (A) restrictions on the scope or nature of the data shared with an authorized integrator;

8 (B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

9 (C) restrictions or conditions on a third party accessing or sharing protecting dealer data or writing data
10 to a dealer data system; and

11 (D) requiring access to sensitive, competitive, or other confidential business information of a third party
12 as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

13 (c) prohibit or limit a dealer's ability to store, copy, securely share, or use protected dealer data outside
14 the dealer data system in any manner or for any reason; or

15 (d) permit access to or access protected dealer data without the express written consent of the dealer.

16 (2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service
17 provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those
18 responsibilities.

19 (3) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by
20 the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the
21 written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation
22 regarding the protection of protected dealer data or results in any liability as a consequence of such actions by
23 the dealer.

24 (4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or
25 authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions
26 of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting
27 any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence
28 of such actions by the dealer data vendor or authorized integrator.

29
30 NEW SECTION. **Section 3. Other responsibilities and restrictions.** All dealer data vendors and

1 authorized integrators:

2 (1) may access, use, store, or share protected dealer data only to the extent permitted in the contract
3 with the dealer;

4 (2) must make any agreement regarding access to, sharing or selling of, copying, using, or transmitting
5 protected dealer data terminable no more than 90 days' notice from the dealer;

6 (3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of
7 consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor
8 dealer data vendor or authorized integrator, including but not limited to:

9 (a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data
10 stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can
11 access and use; and

12 (b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant
13 to any written directions of the dealer;

14 (4) must provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or
15 with whom it has allowed access to protected dealer data; and

16 (5) must allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of
17 any protected dealer data.

18

19 **NEW SECTION. Section 4. Warranty labor reimbursement.** (1) If a motor vehicle franchisor requires
20 or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the
21 franchisor:

22 (a) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered
23 and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as
24 furnished, in an amount equal to the prevailing retail rate charged by the franchisee for such labor or the
25 prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which such labor
26 is rendered or the parts and supplies are furnished other than pursuant to warranty;

27 ~~—— (b) the motor vehicle franchisor may not by agreement, restrictions on reimbursement, or in any other~~
28 ~~way restrict the nature and extent of the labor to be rendered or the parts to be provided so that the restriction~~
29 ~~prevents the motor vehicle franchisee from satisfying the warranty by rendering labor in a good and workmanlike~~
30 ~~manner and providing parts that are required in accordance with generally accepted standards;~~

1 ~~(e)~~(B) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection
2 (1)(a) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in
3 accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding
4 any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with
5 respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

6 ~~(d)~~(C) (i) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by
7 submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders,
8 all of which must be for repairs made no more than 180 days before the submission:

9 (A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

10 (B) all repair orders closed during any period of 90 consecutive days.

11 (ii) The submission required under subsection ~~(1)(d)(i)~~ (1)(C)(i) may consist of:

12 (A) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its
13 parts markup;

14 (B) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the
15 other for calculating its parts markup; or

16 (C) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its
17 prevailing retail parts markup.

18 (2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total
19 charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours
20 charged for the repairs.

21 (3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total
22 charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the
23 purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce
24 a percentage.

25 (4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its
26 prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) OR (3)
27 ~~or this subsection~~ if the franchisee seeks to be compensated under subsection (1).

28 (5) (a) Any discounts must be allocated as indicated on the face of a repair order between parts and
29 labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional
30 reward program cash-equivalent pay methods may not be considered discounts.

(b) As used in ~~subsection (1)(a)~~ THIS SECTION, a "qualified repair" does not include:

(i) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

(ii) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;

(iii) repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;

(iv) repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns, or are otherwise subject to motor vehicle franchisor discounts;

(v) repairs of motor vehicles owned by the dealer or an employee of the dealer;

(vi) installations of accessories;

(vii) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;

(viii) safety or vehicle emission inspections required by law;

(ix) vehicle reconditioning;

(x) parts sold ~~or labor performed~~ at wholesale;

(xi) repairs using after-market parts; or

(xii) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2), unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

(b) The objection must contain:

(i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

(ii) evidence substantiating each stated reason;

(iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

(iv) a proposed adjusted retail labor rate or retail parts rate, as applicable, ~~based on the qualified repair orders submitted by the franchisee.~~

(c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After

1 submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any
2 element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup,
3 except in connection with litigation.

4 (d) A revision or supplement to a submission to correct or clarify the submission does not constitute a
5 new submission for any purpose, including but not limited to that of subsection (9).

6 (7) In a judicial proceeding or a department proceeding involving an application or enforcement of the
7 provisions of 61-4-203, 61-4-204, and 61-4-210(4):

8 (a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle
9 franchisee was materially inaccurate;

10 (b) the motor vehicle franchisor has the burden of proof; and

11 (c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt
12 of the franchisee's submission.

13 (8) A motor vehicle franchisor may not directly or indirectly:

14 (a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means
15 or methodology other than as prescribed in 61-4-204; or

16 (ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a
17 process to establish or alter that labor rate or parts markup, including but not limited to:

18 (A) substituting any other purported qualified repair order sample for that submitted, ~~or submittable~~, by
19 a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor
20 rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup, or the use,
21 for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for
22 purposes of establishing or increasing its labor rate; or

23 (B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly
24 burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction
25 calculations;

26 (b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers
27 for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge
28 to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

29 (c) establish or implement a special part number for parts used in warranty work if it results in lower
30 compensation to the franchisee than as calculated in this section;

1 (d) require, influence, or attempt to influence a franchisee to implement or change the prices for which
2 it sells parts or labor in retail repairs;

3 (e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation
4 pursuant to this section, or dissuade or discourage the franchisee from doing so, including but not limited to:

5 (i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations
6 to the franchisee under this section;

7 (ii) acting or failing to act, other than in good faith;

8 (iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this
9 section to a franchisee;

10 (iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive
11 regarding compensation due under this section other than in a uniform and consistent manner among the
12 franchisor's franchisees in this state; or

13 (v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related
14 audit; or

15 (e) implement or continue a policy, procedure, or program to any of its franchisees for compensation that
16 is inconsistent with this section.

17 (9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsection
18 (1)(d):

19 (a) its warranty labor rate more than once in a 12-month period; and

20 (b) its warranty parts markup more than once in a 12-month period.

21 (10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale
22 cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the
23 recreational motor vehicle franchisor.

24 (11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at
25 a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's
26 cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the
27 fair wholesale value of the part. The fair wholesale value of the part is the greater of:

28 (a) the amount the franchisee paid for the part or a substantially identical part if already owned by the
29 franchisee;

30 (b) the cost of the part shown in a current or prior established price schedule of the franchisor; or

1 (c) the cost of a substantially identical part shown in a current or prior established price schedule of the
2 franchisor.

3 (12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and
4 labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

5 (b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the
6 claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified
7 in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back
8 to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly
9 performed, or that the parts or labor were unnecessary to correct the defective condition.

10 (c) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the
11 dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services
12 in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of
13 submission of the claim.

14 (d) A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a
15 specific claim processing requirement, such as a clerical error or other administrative technicality that does not
16 put into question the legitimacy of the claim.

17 (e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the
18 claim.

19 (13) For the purposes of this section, the following definitions apply:

20 (a) "Labor" means work or service performed, including that of a diagnostic character, with respect to
21 repair of a motor vehicle.

22 (b) "Parts" means original or replacement parts, accessories, and components with respect to a motor
23 vehicle, including engine, transmission, and other parts assemblies.

24 (c) "Qualified repair" means a repair to a vehicle that:

25 (i) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having
26 exceeded the ~~chronological~~ TIME or mileage limit of the warranty;

27 (ii) does not otherwise constitute warranty work; and

28 (iii) does not constitute any of the work encompassed by subsection (5)(b).

29 (d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair
30 or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price, and in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified pre-owned warranty, in each case issued or administered by a motor vehicle franchisor.

Section 5. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Cancellation" or "canceled" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

~~(1)~~(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

~~(2)~~(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(3)~~(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(4)~~(5) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

~~(5)~~(6) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

~~(6)~~(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

~~(7)~~(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 6. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~If a retailer enters into~~ Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, ~~unused~~, undamaged, and complete inventory items held by the dealer at the time of cancellation, INCLUDING VEHICLES WITH LESS THAN 1,000 MILES ON THE ODOMETER, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and

1 held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

2 (2) ~~If a wholesaler enters into~~ Upon cancellation of a written distribution contract ~~and either the~~
3 ~~wholesaler, manufacturer, or distributor cancels the contract,~~ entered into between a wholesaler and a
4 manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the
5 wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the
6 manufacturer or distributor, an amount equal to:

7 (a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items, except repair
8 parts, held by the wholesaler at the time of cancellation, INCLUDING VEHICLES WITH LESS THAN 1,000 MILES ON THE
9 ODOMETER; and

10 (b) 100% of the current net price of each repair part carried on the most recent price list or catalog or
11 the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and
12 held by the wholesaler at the time of cancellation.

13 (3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in
14 subsection (1) or (2) must be made within 60 days of the ~~return of the inventory items to the wholesaler,~~
15 ~~manufacturer, or distributor~~ retailer's or wholesaler's repurchase request. Title to such inventory items passes
16 to the wholesaler, manufacturer, or distributor upon making such payment.

17 (4) A manufacturer or distributor has 30 days FROM THE DATE OF THE REPURCHASE REQUEST to complete,
18 at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which
19 the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on
20 request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place
21 of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day
22 deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts."

23
24 **Section 7.** Section 30-11-703, MCA, is amended to read:

25 **"30-11-703. Excepted inventory.** The following inventory is not subject to the repurchase requirements
26 of 30-11-702:

27 (1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber
28 items, gaskets, or wet-charge batteries;

29 (2) any repair part that is in a broken or damaged package;

30 (3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, ~~unused~~, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702."

Section 8. Section 30-11-705, MCA, is amended to read:

"30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools.

~~Upon the termination, cancellation, nonrenewal, or refusal to continue of a dealership contract, by a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or distributor, credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, shall pay the retailer an amount equal to:~~

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, ~~if the acquisition of~~ acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the

wholesaler, manufacturer, or distributor; or

(b) if ~~the a sign, item of special equipment, or special tool~~ has a service agreement or if the sign, item of special tools are equipment, or special tool is leased by the retailer, the amounts ~~that are~~ required to ~~terminate~~ be paid upon termination of the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and loading the signs, special equipment, and special tools."

Section 9. Section 30-11-712, MCA, is amended to read:

"30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for ~~100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs;~~

(1) all sums required under this part;

(2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the 31st day after the repurchase request;

(3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this section, at the rate of 15% a year A RATE CALCULATED PURSUANT TO 25-9-205 until paid; and

(4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses."

Section 10. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special equipment, or special tools; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in ~~30-11-702~~ this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to

1 the remedy provided in ~~30-11-702~~ this part with regard to any inventory ~~not covered by contract~~, PARTS, signs,
2 special equipment, or special tools THAT ARE NOT INCLUDED IN CONTRACT REMEDIES, provided that the retailer or
3 wholesaler is not entitled to recover more than one time on any claim of loss or damage."

4
5 **Section 11.** Section 61-4-132, MCA, is amended to read:

6 **"61-4-132. Right of designated family member to succeed in dealership ownership.** (1) Any
7 designated family member of a retiring, deceased, or incapacitated dealer may succeed the dealer in the
8 ownership or operation of the dealership under the existing franchise or distribution agreement if upon the retiring
9 dealer or the family member gives of a deceased or incapacitated dealer giving the manufacturer, factory branch,
10 distributor, or importer of new motor vehicles written notice of the intention to succeed the dealer in the ownership
11 or operation of the dealership ~~do so~~ within 120 days of PRIOR TO the dealer's expected date of retirement or WITHIN
12 120 DAYS AFTER the death or incapacity and unless there exists good cause for refusal to honor the succession
13 on the part of the manufacturer, factory branch, distributor, or importer of the dealer. The manufacturer, factory
14 branch, distributor, or importer may refuse to honor the notice of succession only for good cause in the manner
15 provided for in 61-4-133.

16 (2) The manufacturer, factory branch, distributor, or importer may request, and the designated family
17 member shall provide, upon on request, personal and financial data that is reasonably necessary to determine
18 whether the succession should be honored. The designated family member must meet the manufacturer's, factory
19 branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer or shall
20 employ. IF THE DESIGNATED FAMILY MEMBER LACKS EXPERIENCE REQUIRED TO MEET THOSE REQUIREMENTS, THEN THE
21 MANUFACTURER SHALL ALLOW THE SUCCESSOR A REASONABLE AMOUNT OF TIME TO MEET THOSE REQUIREMENTS
22 PROVIDED THAT DURING THE PERIOD, THE SUCCESSOR EMPLOYS an individual who is qualified and experienced as
23 a general manager to manage the day-to-day operations of the motor vehicle dealership."

24
25 **Section 12.** Section 61-4-133, MCA, is amended to read:

26 **"61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer,
27 factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the
28 ownership and operation of a dealership by a designated family member ~~of a deceased or incapacitated dealer~~
29 under the existing franchise agreement as provided for in this part, the manufacturer, factory branch, distributor,
30 or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer

1 in the ownership and operation of the dealership, serve upon the designated family member and the department
2 notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with
3 the dealership no sooner than 90 days from the date the notice is served.

4 (2) The notice must state the specific grounds for the refusal to honor the succession and of its intent
5 to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the
6 notice is served.

7 (3) If notice of refusal and discontinuance is not timely served upon the designated family member and
8 the department or if the department rules in favor of the designated family member complainant in a hearing held
9 pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise
10 permitted by law.

11 (4) In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family
12 member's succession to the ownership and operation of the dealership without complying with this part, the
13 designated family member may commence a proceeding before the department for declaratory judgment against
14 the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right
15 to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the
16 designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a
17 manufacturer, factory branch, distributor, or importer."
18

19 **Section 13.** Section 61-4-134, MCA, is amended to read:

20 **"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who receives
21 notice of the manufacturer's, factory ~~branch~~ branch's, distributor's, or importer's refusal to honor the family
22 member's succession to the ownership and operation of the dealership may, within the 90-day period, ~~file with~~
23 ~~the department a verified complaint for a hearing and determination by the department on whether good cause~~
24 ~~exists for refusal and discontinuance~~ file a written complaint with the department for a hearing and determination
25 by the department as to whether good cause exists for refusal to honor the designated family member's
26 succession to the operation and ownership of the dealership.

27 (2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by
28 showing that the designated family member failed to comply with the provisions of 61-4-132(2) and OR that the
29 succession would be detrimental to the public interest ~~or to the representation of the manufacturer, factory~~
30 ~~branch, distributor, or importer pursuant to 61-4-206 and 61-4-207.~~

(3) The franchise agreement must continue in effect until the final adjudication by the department on the ~~verified complaint~~ written complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during adjudication by the department and the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the ~~complainant~~ designated family member an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 14. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic

1 agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as
2 provided in this section is not required.

3 (4) A manufacturer shall file with the department a copy of the delivery and preparation obligations
4 required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and
5 preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and
6 the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the
7 manufacturer constitute the manufacturer's product or warranty liability only. A manufacturer may not refuse a
8 dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging
9 manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere
10 allegations of the complaint without a thorough REASONABLE investigation of the facts and determination that the
11 dealer failed to perform the dealer's delivery and preparation obligations as required by this subsection or
12 otherwise violated a legal duty owed to the claimant OR MANUFACTURER. However, this section may not affect the
13 obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by
14 law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and
15 water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross
16 vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses
17 incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery
18 and preparation obligations as provided in this part at the same rate and time the dealer charges to its retail
19 customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor
20 time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail
21 work.

22 (5) ~~(a)~~ All claims made by the dealer pursuant to this section part for compensation for delivery,
23 preparation, ~~warranty~~, and recall service, including labor, parts, and other expenses, and claims made for
24 incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, UNLESS THE
25 CLAIM IS PROPERLY DISAPPROVED, except that a manufacturer of a motor home shall pay any claim within 60 days
26 of receipt from the dealer.

27 ~~(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim~~
28 ~~that has not been disapproved in writing within 30 days of having been received must be considered approved,~~
29 ~~and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for~~
30 ~~a period of 12 months following the payment of the claim.~~

~~1 (c) A claim that has been approved and paid may not be charged back to the dealer unless the
2 manufacturer proves that:~~

~~3 (i) the claim was false or fraudulent;~~

~~4 (ii) the repairs were not properly made; or~~

~~5 (iii) the repairs were not necessary to correct the defective condition.~~

~~6 (d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the
7 dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services
8 in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim
9 based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a
10 clerical error or other administrative technicality that does not put into question the legitimacy of the claim.~~

11 (6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver
12 motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value
13 for which the dealer is otherwise ~~eligible~~ entitled under a sales promotion, program, or contest, and may not
14 prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a
15 motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have
16 reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption
17 that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign
18 country if the motor vehicle is titled in the United States.

~~19 (7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for
20 warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer
21 any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including
22 motor vehicles and parts.~~

23 ~~(8)~~ (7) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity
24 of paid claims or charge-backs for customer or dealer incentives.

25 ~~(9)~~ (8) A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back
26 to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental
27 failure as set forth in ~~subsection (5)(d)~~ [section 4(12)(d)], regardless of whether the denial or charge-back was
28 a direct or an indirect transaction.

29 ~~(10)~~ (9) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if
30 provided by the franchise agreement, to submit a claim for payment or compensation under the program.

1 ~~(11)~~(10) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except
2 as provided in subsection (5)(c), after the expiration of 1 year after the date of payment of a motor vehicle claim
3 or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may
4 not:

5 (a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved
6 and paid by the franchisor under an incentive program;

7 (b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value
8 awarded to the dealer under an incentive program; or

9 (c) audit the records of a dealer to determine compliance with the terms of an incentive program.

10 ~~(12)~~(11) Subsection ~~(11)~~(10) does not prohibit a franchisor from making charge-backs to a dealer for
11 fraud at any time as permitted by ~~subsection (5)(c)~~ this section 27-2-203.

12 ~~(13)~~(12) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the
13 manufacturer's delivery and preparation requirements indicating that each of those requirements has been
14 performed.

15 (13) Any violation of this section constitutes a prohibited practice."

16
17 **Section 15.** Section 61-4-205, MCA, is amended to read:

18 **"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions,
19 or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a
20 franchise unless the franchisor has cause for termination or noncontinuance.

21 (2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor
22 vehicle dealership in any community in which the same line-make is then represented unless there is good cause
23 for an additional new motor vehicle dealership under a franchise and it is in the public interest.

24 (3) (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise
25 establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than
26 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of
27 intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the
28 same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor
29 until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This
30 section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects

1 voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

2 (b) The notice to be filed with the department of a franchisor's intention to enter into a franchise for
3 additional representation of the same line-make must name the proposed additional franchisee and must identify
4 by legal description or street address the additional location in the community. A change in the identity of the
5 proposed additional franchisee or of the additional location in the community may only be accomplished by the
6 withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a
7 franchise for additional representation of the same line-make in the same community may be made by a
8 franchisor in a 3-calendar-year period WITHIN 3 CALENDAR YEARS OF THE DATE OF FINAL DISPOSITION OF A NOTICE OF
9 INTENTION.

10 (c) If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding
11 under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to
12 recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and
13 consultant fees incurred in resisting the proceeding.

14 (4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall,
15 within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the
16 notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not
17 continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice
18 must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business
19 of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of
20 business of each recipient and to the statutory agent of each corporate recipient. The department may also give
21 a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

22 (5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor
23 may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial
24 and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new
25 motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

26 (6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the
27 sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer
28 to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership
29 in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied
30 or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

(a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

(b) ceasing production of the line-make; or

(c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

(9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

(i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

(ii) the higher of the fair market value of the franchise on the following dates:

(A) the effective date of the termination, cancellation, or failure to renew;

(B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

(C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

(b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

(10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the

original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

(11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 16. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections -- hearing. (1) (a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional

franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the ~~verified~~ written complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 17. Section 61-4-207, MCA, is amended to read:

"61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

1 (a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not
2 discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local
3 popularity of general vehicle types;

4 (b) investment necessarily made and obligations incurred by the franchisee in the performance of the
5 franchisee's part of the franchise;

6 (c) permanency of the investment;

7 (d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

8 (e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified
9 management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold
10 at retail by the franchisee and any other new motor vehicle of the same line-make;

11 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee
12 if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

13 (g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the
14 written and uniformly applied requirements of the franchise that are determined by the department to be
15 reasonable and material; and

16 (h) the enforceability of the franchise from a public policy standpoint, including issues of the
17 reasonableness of the franchise's terms and the parties' relative bargaining power.

18 (2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do
19 not constitute good cause for the termination or noncontinuance of a franchise:

20 (a) a change in ownership of the franchisee's dealership;

21 (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part,
22 accessory, or any other commodity or service not ordered by the franchisee;

23 (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to
24 the use or number of franchises or the dealership premises or facilities; or

25 (d) the desire of a franchisor or a franchisor's representative:

26 (i) for greater market penetration; or

27 (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.

28 (3) In determining whether good cause has been established for entering into an additional franchise
29 for the same line-make, the department shall take into consideration the existing circumstances, including but
30 not limited to:

1 (a) amount of business transacted by other existing franchisees of the same line-make in that
2 community;

3 (b) investment necessarily made and obligations incurred by other existing franchisees of the same
4 line-make in that community in the performance of their part of their ~~franchises~~ franchise agreements and the date
5 of the investment made and the obligations incurred by the existing franchisees in relation to the date of
6 appointment of the additional franchisee; and

7 (c) whether the other existing franchisees of the same line-make in that community are substantially
8 compliant with reasonable manufacturer requirements for providing adequate consumer care, including
9 satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment,
10 replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle
11 products of the line-make ~~and whether sufficient qualified management, sales, and trained service personnel to~~
12 ~~satisfy the reasonable requirements of the manufacturer for the other existing franchisees and the additional~~
13 ~~franchisee are available in that community; and~~

14 (d) whether the ~~population and~~ demographic characteristics, INCLUDING POPULATION, of that community
15 have changed sufficiently since the appointment of the other existing franchisees to support the economic viability
16 of both the other existing franchisees and the additional franchisee."

17
18 NEW SECTION. Section 18. Codification instruction. (1) [Sections 1 through 3] are intended to be
19 codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections
20 1 through 3].

21 (2) [Section 4] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply
22 to [section 4].

23
24 NEW SECTION. Section 19. Effective date. [This act] is effective on passage and approval.

25 - END -

HOUSE BILL NO. 617

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer

1 data or to write data to a dealer data system to carry out the specified function.

2 (2) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any
3 authorized dealer personnel acting on behalf of the dealer owner-operator.

4 (3) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled
5 by a dealer and used by the dealer in its business operations.

6 (4) "Dealer data vendor" means any dealer management system provider or customer relationship
7 management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer
8 or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer
9 data pursuant to a contract with a dealer.

10 (5) "Fees" means charges for access to protected dealer data. Fees must be disclosed to the dealer prior
11 to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.

12 (6) "Protected dealer data" means:

13 (a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a
14 consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer's
15 dealer data system; or

16 (b) any other data regarding a dealer's business operations that is stored in the dealer's dealer data
17 system.

18 (7) "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and
19 any other individual or entity other than the dealer. The term does not include any government entity acting
20 pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle
21 manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity
22 acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the
23 privacy of protected dealer data.

24
25 **NEW SECTION. Section 2. Prohibited actions.** (1) A third party may not:

26 (a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without
27 the express written consent of the dealer;

28 (b) take any action by contract, by technical means, or by any other means that would prohibit or limit
29 a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited
30 to:

1 (i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or
2 sharing of protected dealer data or for writing data to a dealer data system;

3 (ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from
4 integrating into that dealer's dealer data system, or placing unreasonable restrictions on integration by any such
5 authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of
6 restrictions include but are not limited to:

7 (A) restrictions on the scope or nature of the data shared with an authorized integrator;

8 (B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

9 (C) restrictions or conditions on a third party accessing or sharing protecting dealer data or writing data
10 to a dealer data system; and

11 (D) requiring access to sensitive, competitive, or other confidential business information of a third party
12 as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

13 (c) prohibit or limit a dealer's ability to store, copy, securely share, or use protected dealer data outside
14 the dealer data system in any manner or for any reason; or

15 (d) permit access to or access protected dealer data without the express written consent of the dealer.

16 (2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service
17 provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those
18 responsibilities.

19 (3) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by
20 the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the
21 written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation
22 regarding the protection of protected dealer data or results in any liability as a consequence of such actions by
23 the dealer.

24 (4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or
25 authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions
26 of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting
27 any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence
28 of such actions by the dealer data vendor or authorized integrator.

29
30 NEW SECTION. **Section 3. Other responsibilities and restrictions.** All dealer data vendors and

1 authorized integrators:

2 (1) may access, use, store, or share protected dealer data only to the extent permitted in the contract
3 with the dealer;

4 (2) must make any agreement regarding access to, sharing or selling of, copying, using, or transmitting
5 protected dealer data terminable no more than 90 days' notice from the dealer;

6 (3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of
7 consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor
8 dealer data vendor or authorized integrator, including but not limited to:

9 (a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data
10 stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can
11 access and use; and

12 (b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant
13 to any written directions of the dealer;

14 (4) must provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or
15 with whom it has allowed access to protected dealer data; and

16 (5) must allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of
17 any protected dealer data.

18

19 **NEW SECTION. Section 4. Warranty labor reimbursement.** (1) If a motor vehicle franchisor requires
20 or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the
21 franchisor:

22 (a) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered
23 and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as
24 furnished, in an amount equal to the prevailing retail rate charged by the franchisee for such labor or the
25 prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which such labor
26 is rendered or the parts and supplies are furnished other than pursuant to warranty;

27 ~~—— (b) the motor vehicle franchisor may not by agreement, restrictions on reimbursement, or in any other~~
28 ~~way restrict the nature and extent of the labor to be rendered or the parts to be provided so that the restriction~~
29 ~~prevents the motor vehicle franchisee from satisfying the warranty by rendering labor in a good and workmanlike~~
30 ~~manner and providing parts that are required in accordance with generally accepted standards;~~

~~(c)(B)~~ the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

~~(d)(C)~~ (i) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(ii) The submission required under subsection ~~(1)(d)(i)~~ (1)(C)(i) may consist of:

(A) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(B) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(C) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

(4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) OR (3) ~~or this subsection~~ if the franchisee seeks to be compensated under subsection (1).

(5) (a) Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

(b) As used in ~~subsection (1)(a)~~ THIS SECTION, a "qualified repair" does not include:

(i) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

(ii) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;

(iii) repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;

(iv) repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns, or are otherwise subject to motor vehicle franchisor discounts;

(v) repairs of motor vehicles owned by the dealer or an employee of the dealer;

(vi) installations of accessories;

(vii) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;

(viii) safety or vehicle emission inspections required by law;

(ix) vehicle reconditioning;

(x) parts sold ~~or labor performed~~ at wholesale;

(xi) repairs using after-market parts; or

(xii) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2), unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

(b) The objection must contain:

(i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

(ii) evidence substantiating each stated reason;

(iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

(iv) a proposed adjusted retail labor rate or retail parts rate, as applicable, ~~based on the qualified repair orders submitted by the franchisee.~~

(c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After

1 submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any
2 element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup,
3 except in connection with litigation.

4 (d) A revision or supplement to a submission to correct or clarify the submission does not constitute a
5 new submission for any purpose, including but not limited to that of subsection (9).

6 (7) In a judicial proceeding or a department proceeding involving an application or enforcement of the
7 provisions of 61-4-203, 61-4-204, and 61-4-210(4):

8 (a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle
9 franchisee was materially inaccurate;

10 (b) the motor vehicle franchisor has the burden of proof; and

11 (c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt
12 of the franchisee's submission.

13 (8) A motor vehicle franchisor may not directly or indirectly:

14 (a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means
15 or methodology other than as prescribed in 61-4-204; or

16 (ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a
17 process to establish or alter that labor rate or parts markup, including but not limited to:

18 (A) substituting any other purported qualified repair order sample for that submitted, ~~or submittable~~, by
19 a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor
20 rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup, or the use,
21 for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for
22 purposes of establishing or increasing its labor rate; or

23 (B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly
24 burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction
25 calculations;

26 (b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers
27 for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge
28 to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

29 (c) establish or implement a special part number for parts used in warranty work if it results in lower
30 compensation to the franchisee than as calculated in this section;

(d) require, influence, or attempt to influence a franchisee to implement or change the prices for which it sells parts or labor in retail repairs;

(e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation pursuant to this section, or dissuade or discourage the franchisee from doing so, including but not limited to:

(i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations to the franchisee under this section;

(ii) acting or failing to act, other than in good faith;

(iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee;

(iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and consistent manner among the franchisor's franchisees in this state; or

(v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related audit; or

(e) implement or continue a policy, procedure, or program to any of its franchisees for compensation that is inconsistent with this section.

(9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsection (1)(d):

(a) its warranty labor rate more than once in a 12-month period; and

(b) its warranty parts markup more than once in a 12-month period.

(10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the recreational motor vehicle franchisor.

(11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the greater of:

(a) the amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee;

(b) the cost of the part shown in a current or prior established price schedule of the franchisor; or

1 (c) the cost of a substantially identical part shown in a current or prior established price schedule of the
2 franchisor.

3 (12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and
4 labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

5 (b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the
6 claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified
7 in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back
8 to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly
9 performed, or that the parts or labor were unnecessary to correct the defective condition.

10 (c) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the
11 dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services
12 in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of
13 submission of the claim.

14 (d) A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a
15 specific claim processing requirement, such as a clerical error or other administrative technicality that does not
16 put into question the legitimacy of the claim.

17 (e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the
18 claim.

19 (13) For the purposes of this section, the following definitions apply:

20 (a) "Labor" means work or service performed, including that of a diagnostic character, with respect to
21 repair of a motor vehicle.

22 (b) "Parts" means original or replacement parts, accessories, and components with respect to a motor
23 vehicle, including engine, transmission, and other parts assemblies.

24 (c) "Qualified repair" means a repair to a vehicle that:

25 (i) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having
26 exceeded the ~~chronological~~ TIME or mileage limit of the warranty;

27 (ii) does not otherwise constitute warranty work; and

28 (iii) does not constitute any of the work encompassed by subsection (5)(b).

29 (d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair
30 or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price, and in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified pre-owned warranty, in each case issued or administered by a motor vehicle franchisor.

Section 5. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Cancellation" or "canceled" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

~~(1)~~(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

~~(2)~~(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(3)~~(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(4)~~(5) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

~~(5)~~(6) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

~~(6)~~(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

~~(7)~~(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 6. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~If a retailer enters into~~ Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, ~~unused~~, undamaged, and complete inventory items held by the dealer at the time of cancellation, INCLUDING VEHICLES WITH LESS THAN 1,000 MILES ON THE ODOMETER, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and

1 held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

2 (2) ~~If a wholesaler enters into~~ Upon cancellation of a written distribution contract ~~and either the~~
3 ~~wholesaler, manufacturer, or distributor cancels the contract,~~ entered into between a wholesaler and a
4 manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the
5 wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the
6 manufacturer or distributor, an amount equal to:

7 (a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items, except repair
8 parts, held by the wholesaler at the time of cancellation, INCLUDING VEHICLES WITH LESS THAN 1,000 MILES ON THE
9 ODOMETER; and

10 (b) 100% of the current net price of each repair part carried on the most recent price list or catalog or
11 the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and
12 held by the wholesaler at the time of cancellation.

13 (3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in
14 subsection (1) or (2) must be made within 60 days of the ~~return of the inventory items to the wholesaler,~~
15 ~~manufacturer, or distributor~~ retailer's or wholesaler's repurchase request. Title to such inventory items passes
16 to the wholesaler, manufacturer, or distributor upon making such payment.

17 (4) A manufacturer or distributor has 30 days FROM THE DATE OF THE REPURCHASE REQUEST to complete,
18 at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which
19 the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on
20 request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place
21 of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day
22 deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts."

23
24 **Section 7.** Section 30-11-703, MCA, is amended to read:

25 **"30-11-703. Excepted inventory.** The following inventory is not subject to the repurchase requirements
26 of 30-11-702:

27 (1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber
28 items, gaskets, or wet-charge batteries;

29 (2) any repair part that is in a broken or damaged package;

30 (3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, ~~unused~~, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702."

Section 8. Section 30-11-705, MCA, is amended to read:

"30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools.

~~Upon the termination, cancellation, nonrenewal, or refusal to continue of a dealership contract, by a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or distributor, credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, shall pay the retailer an amount equal to:~~

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, ~~if the acquisition of~~ acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the

1 wholesaler, manufacturer, or distributor; or

2 (b) if ~~the a sign, item of special equipment, or special tool~~ has a service agreement or if the sign, item
3 of special tools are equipment, or special tool is leased by the retailer, the amounts ~~that are~~ required to ~~terminate~~
4 be paid upon termination of the service agreement or the lease under the terms of the service or lease
5 agreement; and

6 (3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and
7 loading the signs, special equipment, and special tools."

8
9 **Section 9.** Section 30-11-712, MCA, is amended to read:

10 **"30-11-712. Civil liability.** If any wholesaler, manufacturer, or distributor fails or refuses to repurchase
11 or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special
12 tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for ~~100% of~~
13 ~~the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or~~
14 ~~wholesaler's attorney fees, and court costs;~~

15 (1) all sums required under this part;

16 (2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor
17 plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the
18 31st day after the repurchase request;

19 (3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this
20 section, at the rate of 15% a year A RATE CALCULATED PURSUANT TO 25-9-205 until paid; and

21 (4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses."

22
23 **Section 10.** Section 30-11-713, MCA, is amended to read:

24 **"30-11-713. Remedy as supplemental.** (1) The provisions of this part are supplemental to any
25 agreement between:

26 (a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special
27 equipment, or special tools; or

28 (b) the wholesaler and manufacturer or distributor governing the inventory.

29 (2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in
30 ~~30-11-702~~ this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to

1 the remedy provided in ~~30-11-702~~ this part with regard to any inventory ~~not covered by contract~~, PARTS, signs,
2 special equipment, or special tools THAT ARE NOT INCLUDED IN CONTRACT REMEDIES, provided that the retailer or
3 wholesaler is not entitled to recover more than one time on any claim of loss or damage."

4
5 **Section 11.** Section 61-4-132, MCA, is amended to read:

6 **"61-4-132. Right of designated family member to succeed in dealership ownership.** (1) Any
7 designated family member of a retiring, deceased, or incapacitated dealer may succeed the dealer in the
8 ownership or operation of the dealership under the existing franchise or distribution agreement if upon the retiring
9 dealer or the family member gives of a deceased or incapacitated dealer giving the manufacturer, factory branch,
10 distributor, or importer of new motor vehicles written notice of the intention to succeed the dealer in the ownership
11 or operation of the dealership ~~do so~~ within 120 days of PRIOR TO the dealer's expected date of retirement or WITHIN
12 120 DAYS AFTER the death or incapacity and unless there exists good cause for refusal to honor the succession
13 on the part of the manufacturer, factory branch, distributor, or importer of the dealer. The manufacturer, factory
14 branch, distributor, or importer may refuse to honor the notice of succession only for good cause in the manner
15 provided for in 61-4-133.

16 (2) The manufacturer, factory branch, distributor, or importer may request, and the designated family
17 member shall provide, upon on request, personal and financial data that is reasonably necessary to determine
18 whether the succession should be honored. The designated family member must meet the manufacturer's, factory
19 branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer or shall
20 employ. IF THE DESIGNATED FAMILY MEMBER LACKS EXPERIENCE REQUIRED TO MEET THOSE REQUIREMENTS, THEN THE
21 MANUFACTURER SHALL ALLOW THE SUCCESSOR A REASONABLE AMOUNT OF TIME TO MEET THOSE REQUIREMENTS
22 PROVIDED THAT DURING THE PERIOD, THE SUCCESSOR EMPLOYS an individual who is qualified and experienced as
23 a general manager to manage the day-to-day operations of the motor vehicle dealership."

24
25 **Section 12.** Section 61-4-133, MCA, is amended to read:

26 **"61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer,
27 factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the
28 ownership and operation of a dealership by a designated family member ~~of a deceased or incapacitated dealer~~
29 under the existing franchise agreement as provided for in this part, the manufacturer, factory branch, distributor,
30 or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer

1 in the ownership and operation of the dealership, serve upon the designated family member and the department
2 notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with
3 the dealership no sooner than 90 days from the date the notice is served.

4 (2) The notice must state the specific grounds for the refusal to honor the succession and of its intent
5 to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the
6 notice is served.

7 (3) If notice of refusal and discontinuance is not timely served upon the designated family member and
8 the department or if the department rules in favor of the designated family member complainant in a hearing held
9 pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise
10 permitted by law.

11 (4) In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family
12 member's succession to the ownership and operation of the dealership without complying with this part, the
13 designated family member may commence a proceeding before the department for declaratory judgment against
14 the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right
15 to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the
16 designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a
17 manufacturer, factory branch, distributor, or importer."
18

19 **Section 13.** Section 61-4-134, MCA, is amended to read:

20 **"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who receives
21 notice of the manufacturer's, factory ~~branch~~ branch's, distributor's, or importer's refusal to honor the family
22 member's succession to the ownership and operation of the dealership may, within the 90-day period, ~~file with~~
23 ~~the department a verified complaint for a hearing and determination by the department on whether good cause~~
24 ~~exists for refusal and discontinuance~~ file a written complaint with the department for a hearing and determination
25 by the department as to whether good cause exists for refusal to honor the designated family member's
26 succession to the operation and ownership of the dealership.

27 (2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by
28 showing that the designated family member failed to comply with the provisions of 61-4-132(2) and OR that the
29 succession would be detrimental to the public interest or to the representation of the manufacturer, factory
30 branch, distributor, or importer pursuant to 61-4-206 and 61-4-207.

(3) The franchise agreement must continue in effect until the final adjudication by the department on the ~~verified complaint~~ written complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during adjudication by the department and the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the ~~complainant~~ designated family member an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 14. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic

1 agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as
2 provided in this section is not required.

3 (4) A manufacturer shall file with the department a copy of the delivery and preparation obligations
4 required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and
5 preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and
6 the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the
7 manufacturer constitute the manufacturer's product or warranty liability only. A manufacturer may not refuse a
8 dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging
9 manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere
10 allegations of the complaint without a thorough REASONABLE investigation of the facts and determination that the
11 dealer failed to perform the dealer's delivery and preparation obligations as required by this subsection or
12 otherwise violated a legal duty owed to the claimant OR MANUFACTURER. However, this section may not affect the
13 obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by
14 law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and
15 water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross
16 vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses
17 incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery
18 and preparation obligations as provided in this part at the same rate and time the dealer charges to its retail
19 customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor
20 time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail
21 work.

22 (5) ~~(a)~~ All claims made by the dealer pursuant to this section part for compensation for delivery,
23 preparation, ~~warranty~~, and recall service, including labor, parts, and other expenses, and claims made for
24 incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, UNLESS THE
25 CLAIM IS PROPERLY DISAPPROVED, except that a manufacturer of a motor home shall pay any claim within 60 days
26 of receipt from the dealer.

27 ~~(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim~~
28 ~~that has not been disapproved in writing within 30 days of having been received must be considered approved,~~
29 ~~and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for~~
30 ~~a period of 12 months following the payment of the claim.~~

~~1 (c) A claim that has been approved and paid may not be charged back to the dealer unless the
2 manufacturer proves that:~~

~~3 (i) the claim was false or fraudulent;~~

~~4 (ii) the repairs were not properly made; or~~

~~5 (iii) the repairs were not necessary to correct the defective condition.~~

~~6 (d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the
7 dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services
8 in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim
9 based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a
10 clerical error or other administrative technicality that does not put into question the legitimacy of the claim.~~

11 (6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver
12 motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value
13 for which the dealer is otherwise ~~eligible~~ entitled under a sales promotion, program, or contest, and may not
14 prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a
15 motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have
16 reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption
17 that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign
18 country if the motor vehicle is titled in the United States.

~~19 (7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for
20 warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer
21 any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including
22 motor vehicles and parts.~~

23 ~~(8)~~(7) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity
24 of paid claims or charge-backs for customer or dealer incentives.

25 ~~(9)~~(8) A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back
26 to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental
27 failure as set forth in ~~subsection (5)(d)~~ [section 4(12)(d)], regardless of whether the denial or charge-back was
28 a direct or an indirect transaction.

29 ~~(10)~~(9) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if
30 provided by the franchise agreement, to submit a claim for payment or compensation under the program.

1 ~~(11)~~(10) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except
2 as provided in subsection ~~(5)~~(c), after the expiration of 1 year after the date of payment of a motor vehicle claim
3 or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may
4 not:

5 (a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved
6 and paid by the franchisor under an incentive program;

7 (b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value
8 awarded to the dealer under an incentive program; or

9 (c) audit the records of a dealer to determine compliance with the terms of an incentive program.

10 ~~(12)~~(11) Subsection ~~(11)~~(10) does not prohibit a franchisor from making charge-backs to a dealer for
11 fraud at any time as permitted by ~~subsection (5)(c)~~ this section 27-2-203.

12 ~~(13)~~(12) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the
13 manufacturer's delivery and preparation requirements indicating that each of those requirements has been
14 performed.

15 (13) Any violation of this section constitutes a prohibited practice."

16
17 **Section 15.** Section 61-4-205, MCA, is amended to read:

18 **"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions,
19 or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a
20 franchise unless the franchisor has cause for termination or noncontinuance.

21 (2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor
22 vehicle dealership in any community in which the same line-make is then represented unless there is good cause
23 for an additional new motor vehicle dealership under a franchise and it is in the public interest.

24 (3) (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise
25 establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than
26 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of
27 intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the
28 same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor
29 until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This
30 section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects

1 voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

2 (b) The notice to be filed with the department of a franchisor's intention to enter into a franchise for
3 additional representation of the same line-make must name the proposed additional franchisee and must identify
4 by legal description or street address the additional location in the community. A change in the identity of the
5 proposed additional franchisee or of the additional location in the community may only be accomplished by the
6 withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a
7 franchise for additional representation of the same line-make in the same community may be made by a
8 franchisor in a 3-calendar-year period WITHIN 3 CALENDAR YEARS OF THE DATE OF FINAL DISPOSITION OF A NOTICE OF
9 INTENTION.

10 (c) If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding
11 under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to
12 recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and
13 consultant fees incurred in resisting the proceeding.

14 (4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall,
15 within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the
16 notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not
17 continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice
18 must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business
19 of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of
20 business of each recipient and to the statutory agent of each corporate recipient. The department may also give
21 a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

22 (5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor
23 may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial
24 and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new
25 motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

26 (6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the
27 sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer
28 to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership
29 in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied
30 or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

(a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

(b) ceasing production of the line-make; or

(c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

(9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

(i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

(ii) the higher of the fair market value of the franchise on the following dates:

(A) the effective date of the termination, cancellation, or failure to renew;

(B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

(C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

(b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

(10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the

original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

(11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 16. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections -- hearing. (1) (a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional

franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the ~~verified~~ written complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 17. Section 61-4-207, MCA, is amended to read:

"61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

1 (a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not
2 discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local
3 popularity of general vehicle types;

4 (b) investment necessarily made and obligations incurred by the franchisee in the performance of the
5 franchisee's part of the franchise;

6 (c) permanency of the investment;

7 (d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

8 (e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified
9 management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold
10 at retail by the franchisee and any other new motor vehicle of the same line-make;

11 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee
12 if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

13 (g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the
14 written and uniformly applied requirements of the franchise that are determined by the department to be
15 reasonable and material; and

16 (h) the enforceability of the franchise from a public policy standpoint, including issues of the
17 reasonableness of the franchise's terms and the parties' relative bargaining power.

18 (2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do
19 not constitute good cause for the termination or noncontinuance of a franchise:

20 (a) a change in ownership of the franchisee's dealership;

21 (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part,
22 accessory, or any other commodity or service not ordered by the franchisee;

23 (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to
24 the use or number of franchises or the dealership premises or facilities; or

25 (d) the desire of a franchisor or a franchisor's representative:

26 (i) for greater market penetration; or

27 (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.

28 (3) In determining whether good cause has been established for entering into an additional franchise
29 for the same line-make, the department shall take into consideration the existing circumstances, including but
30 not limited to:

1 (a) amount of business transacted by other existing franchisees of the same line-make in that
2 community;

3 (b) investment necessarily made and obligations incurred by other existing franchisees of the same
4 line-make in that community in the performance of their part of their ~~franchises~~ franchise agreements and the date
5 of the investment made and the obligations incurred by the existing franchisees in relation to the date of
6 appointment of the additional franchisee; and

7 (c) whether the other existing franchisees of the same line-make in that community are substantially
8 compliant with reasonable manufacturer requirements for providing adequate consumer care, including
9 satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment,
10 replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle
11 products of the line-make ~~and whether sufficient qualified management, sales, and trained service personnel to~~
12 ~~satisfy the reasonable requirements of the manufacturer for the other existing franchisees and the additional~~
13 ~~franchisee are available in that community; and~~

14 (d) whether the ~~population and~~ demographic characteristics, INCLUDING POPULATION, of that community
15 have changed sufficiently since the appointment of the other existing franchisees to support the economic viability
16 of both the other existing franchisees and the additional franchisee."

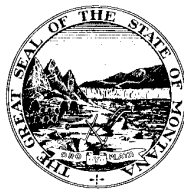
17
18 NEW SECTION. Section 18. Codification instruction. (1) [Sections 1 through 3] are intended to be
19 codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections
20 1 through 3].

21 (2) [Section 4] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply
22 to [section 4].

23
24 NEW SECTION. SECTION 19. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
25 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
26 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
27 APPLICATIONS.

28
29 NEW SECTION. Section 20. Effective date. [This act] is effective on passage and approval.

30 - END -



AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer

data or to write data to a dealer data system to carry out the specified function.

(2) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any authorized dealer personnel acting on behalf of the dealer owner-operator.

(3) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled by a dealer and used by the dealer in its business operations.

(4) "Dealer data vendor" means any dealer management system provider or customer relationship management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer data pursuant to a contract with a dealer.

(5) "Fees" means charges for access to protected dealer data. Fees must be disclosed to the dealer prior to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.

(6) "Protected dealer data" means:

(a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer's dealer data system; or

(b) any other data regarding a dealer's business operations that is stored in the dealer's dealer data system.

(7) "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and any other individual or entity other than the dealer. The term does not include any government entity acting pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the privacy of protected dealer data.

Section 2. Prohibited actions. (1) A third party may not:

(a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of the dealer;

(b) take any action by contract, by technical means, or by any other means that would prohibit or limit a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited

to:

(i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or sharing of protected dealer data or for writing data to a dealer data system;

(ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating into that dealer's dealer data system, or placing unreasonable restrictions on integration by any such authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of restrictions include but are not limited to:

(A) restrictions on the scope or nature of the data shared with an authorized integrator;

(B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

(C) restrictions or conditions on a third party accessing or sharing protected dealer data or writing data to a dealer data system; and

(D) requiring access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

(c) prohibit or limit a dealer's ability to store, copy, securely share, or use protected dealer data outside the dealer data system in any manner or for any reason; or

(d) permit access to or access protected dealer data without the express written consent of the dealer.

(2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

(3) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data vendor or authorized integrator.

Section 3. Other responsibilities and restrictions. All dealer data vendors and authorized integrators:

- (1) may access, use, store, or share protected dealer data only to the extent permitted in the contract with the dealer;
- (2) must make any agreement regarding access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable no more than 90 days' notice from the dealer;
- (3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including but not limited to:
 - (a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can access and use; and
 - (b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;
- (4) must provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or with whom it has allowed access to protected dealer data; and
- (5) must allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of any protected dealer data.

Section 4. Warranty reimbursement. (1) If a motor vehicle franchisor requires or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the franchisor:

- (a) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as furnished, in an amount equal to the prevailing retail rate charged by the franchisee for such labor or the prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which such labor is rendered or the parts and supplies are furnished other than pursuant to warranty;
- (b) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding

any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

(c) (i) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(ii) The submission required under subsection (1)(c)(i) may consist of:

(A) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(B) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(C) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

(4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) or (3) if the franchisee seeks to be compensated under subsection (1).

(5) (a) Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

(b) As used in this section, a "qualified repair" does not include:

(i) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts,

nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

(ii) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;

(iii) repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;

(iv) repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns, or are otherwise subject to motor vehicle franchisor discounts;

(v) repairs of motor vehicles owned by the dealer or an employee of the dealer;

(vi) installations of accessories;

(vii) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;

(viii) safety or vehicle emission inspections required by law;

(ix) vehicle reconditioning;

(x) parts sold at wholesale;

(xi) repairs using after-market parts; or

(xii) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2), unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

(b) The objection must contain:

(i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

(ii) evidence substantiating each stated reason;

(iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

(iv) a proposed adjusted retail labor rate or retail parts rate, as applicable.

(c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup,

except in connection with litigation.

(d) A revision or supplement to a submission to correct or clarify the submission does not constitute a new submission for any purpose, including but not limited to that of subsection (9).

(7) In a judicial proceeding or a department proceeding involving an application or enforcement of the provisions of 61-4-203, 61-4-204, and 61-4-210(4):

(a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle franchisee was materially inaccurate;

(b) the motor vehicle franchisor has the burden of proof; and

(c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt of the franchisee's submission.

(8) A motor vehicle franchisor may not directly or indirectly:

(a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means or methodology other than as prescribed in 61-4-204; or

(ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a process to establish or alter that labor rate or parts markup, including but not limited to:

(A) substituting any other purported qualified repair order sample for that submitted by a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup, or the use, for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for purposes of establishing or increasing its labor rate; or

(B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction calculations;

(b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

(c) establish or implement a special part number for parts used in warranty work if it results in lower compensation to the franchisee than as calculated in this section;

(d) require, influence, or attempt to influence a franchisee to implement or change the prices for which

it sells parts or labor in retail repairs;

(e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation pursuant to this section, or dissuade or discourage the franchisee from doing so, including but not limited to:

(i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations to the franchisee under this section;

(ii) acting or failing to act, other than in good faith;

(iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee;

(iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and consistent manner among the franchisor's franchisees in this state; or

(v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related audit; or

(e) implement or continue a policy, procedure, or program to any of its franchisees for compensation that is inconsistent with this section.

(9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsection (1)(d):

(a) its warranty labor rate more than once in a 12-month period; and

(b) its warranty parts markup more than once in a 12-month period.

(10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the recreational motor vehicle franchisor.

(11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the greater of:

(a) the amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee;

(b) the cost of the part shown in a current or prior established price schedule of the franchisor; or

(c) the cost of a substantially identical part shown in a current or prior established price schedule of the franchisor.

(12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

(b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly performed, or that the parts or labor were unnecessary to correct the defective condition.

(c) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of submission of the claim.

(d) A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

(e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the claim.

(13) For the purposes of this section, the following definitions apply:

(a) "Labor" means work or service performed, including that of a diagnostic character, with respect to repair of a motor vehicle.

(b) "Parts" means original or replacement parts, accessories, and components with respect to a motor vehicle, including engine, transmission, and other parts assemblies.

(c) "Qualified repair" means a repair to a vehicle that:

(i) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having exceeded the time or mileage limit of the warranty;

(ii) does not otherwise constitute warranty work; and

(iii) does not constitute any of the work encompassed by subsection (5)(b).

(d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair

or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price, and in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified pre-owned warranty, in each case issued or administered by a motor vehicle franchisor.

Section 5. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Cancellation" or "canceled" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

~~(+)~~(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

~~(2)~~(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(3)~~(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

~~(4)~~(5) "Inventory" means:

- (a) farm implements, machinery, attachments, and repair parts;
- (b) industrial and construction equipment and repair parts;
- (c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;
- (d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;
- (e) snowmobiles, as defined in 23-2-601, and repair parts;
- (f) off-highway vehicles, as defined in 23-2-801, and repair parts; and
- (g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

~~(5)~~(6) "Net cost" means:

- (a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and
- (b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

~~(6)~~(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

~~(7)~~(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 6. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~If a retailer enters into~~ Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

- (a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items held by the dealer at the time of cancellation, including vehicles with less than 1,000 miles on the odometer, plus cost of

freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) ~~If a wholesaler enters into~~ Upon cancellation of a written distribution contract ~~and either the wholesaler, manufacturer, or distributor cancels the contract,~~ entered into between a wholesaler and a manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, ~~unused,~~ undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation, including vehicles with less than 1,000 miles on the odometer; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the ~~return of the inventory items to the wholesaler, manufacturer, or distributor~~ retailer's or wholesaler's repurchase request. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

(4) A manufacturer or distributor has 30 days from the date of the repurchase request to complete, at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts."

Section 7. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

- (1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;
- (2) any repair part that is in a broken or damaged package;
- (3) any single repair part that is priced as a set of two or more items;
- (4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;
- (6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;
- (7) any inventory item other than a repair part that is not in essentially new, ~~unused~~, undamaged, and complete condition;
- (8) any repair part that is not in new, unused, or undamaged condition;
- (9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;
- (10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and
- (11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702."

Section 8. Section 30-11-705, MCA, is amended to read:

"30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools.

Upon the ~~termination, cancellation, nonrenewal, or refusal to continue~~ of a dealership contract, by a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or distributor, credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, ~~shall pay the retailer an amount equal to:~~

- (1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, ~~if the acquisition of~~

acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) if ~~the a sign, item of~~ a sign, item of special equipment, ~~or special tool~~ or special tool has a service agreement or ~~if the sign, item of special tools are~~ if the sign, item of special equipment, or special tool is leased by the retailer, the amounts ~~that are~~ that are required to ~~terminate~~ be paid upon termination of the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and loading the signs, special equipment, and special tools."

Section 9. Section 30-11-712, MCA, is amended to read:

"30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for ~~100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs;~~

(1) all sums required under this part;

(2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the 31st day after the repurchase request;

(3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this section, at a rate calculated pursuant to 25-9-205 until paid; and

(4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses."

Section 10. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any

agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special equipment, or special tools; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in ~~30-11-702~~ this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in ~~30-11-702~~ this part with regard to any inventory ~~not covered by contract, parts, signs,~~ special equipment, or special tools that are not included in contract remedies, provided that the retailer or wholesaler is not entitled to recover more than one time on any claim of loss or damage."

Section 11. Section 61-4-132, MCA, is amended to read:

"61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a ~~retiring,~~ deceased, or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement if upon the retiring dealer or the family member gives of a deceased or incapacitated dealer giving the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of the intention to succeed the dealer in the ownership or operation of the dealership do so within 120 days of prior to the dealer's expected date of retirement or within 120 days after the death or incapacity ~~and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer of the dealer. The manufacturer, factory branch, distributor, or importer may refuse to honor the notice of succession only for good cause in the manner provided for in 61-4-133.~~

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, ~~upon on~~ request, personal and financial data that is reasonably necessary to determine whether the succession should be honored. The designated family member must meet the manufacturer's, factory branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer. If the designated family member lacks experience required to meet those requirements, then the manufacturer shall allow the successor a reasonable amount of time to meet those requirements provided that during the period, the successor employs an individual who is qualified and experienced as a general manager to manage the day-to-day operations of the motor vehicle dealership."

Section 12. Section 61-4-133, MCA, is amended to read:

"61-4-133. Refusal to honor succession to ownership -- notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member ~~of a deceased or incapacitated dealer~~ under the existing franchise agreement as provided for in this part, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member and the department or if the department rules in favor of the designated family member ~~complainant~~ in a hearing held pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

(4) In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family member's succession to the ownership and operation of the dealership without complying with this part, the designated family member may commence a proceeding before the department for declaratory judgment against the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a manufacturer, factory branch, distributor, or importer."

Section 13. Section 61-4-134, MCA, is amended to read:

"61-4-134. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory ~~branch~~ branch's, distributor's, or importer's refusal to honor the family member's succession to the ownership and operation of the dealership may, within the 90-day period, ~~file with~~

~~the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance~~ file a written complaint with the department for a hearing and determination by the department as to whether good cause exists for refusal to honor the designated family member's succession to the operation and ownership of the dealership.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the designated family member failed to comply with the provisions of 61-4-132(2) or that the succession would be detrimental to the public interest ~~or to the representation of the manufacturer, factory branch, distributor, or importer.~~

(3) The franchise agreement must continue in effect until the final adjudication by the department on the ~~verified complaint~~ written complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during adjudication by the department and the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the ~~complainant~~ designated family member an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 14. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of

domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. A manufacturer may not refuse a dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere allegations of the complaint without a reasonable investigation of the facts and determination that the dealer failed to perform the dealer's delivery and preparation obligations as required by this subsection or otherwise violated a legal duty owed to the claimant or manufacturer. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations as provided in this part ~~at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.~~

(5) ~~(a)~~ All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, and claims made for incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, unless the claim is properly disapproved, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

~~(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.~~

~~—— (c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:~~

~~—— (i) the claim was false or fraudulent;~~

~~—— (ii) the repairs were not properly made; or~~

~~—— (iii) the repairs were not necessary to correct the defective condition.~~

~~—— (d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.~~

(6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value for which the dealer is otherwise ~~eligible~~ entitled under a sales promotion, program, or contest, and may not prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign country if the motor vehicle is titled in the United States.

~~(7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer~~

~~any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts.~~

~~(8)(7)~~ A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or charge-backs for customer or dealer incentives.

~~(9)(8)~~ A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in ~~subsection (5)(d)~~ [section 4(12)(d)], regardless of whether the denial or charge-back was a direct or an indirect transaction.

~~(10)(9)~~ A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if provided by the franchise agreement, to submit a claim for payment or compensation under the program.

~~(11)(10)~~ Notwithstanding the terms of a franchise agreement or other contract with a dealer ~~and except as provided in subsection (5)(c)~~, after the expiration of 1 year after the date of payment of a motor vehicle claim or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may not:

(a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the franchisor under an incentive program;

(b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) audit the records of a dealer to determine compliance with the terms of an incentive program.

~~(12)(11)~~ Subsection ~~(11)(10)~~ does not prohibit a franchisor from making charge-backs to a dealer for fraud at any time as permitted by ~~subsection (5)(c)~~ 27-2-203.

~~(13)(12)~~ The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

(13) Any violation of this section constitutes a prohibited practice."

Section 15. Section 61-4-205, MCA, is amended to read:

"61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a

franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest.

(3) (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(b) The notice to be filed with the department of a franchisor's intention to enter into a franchise for additional representation of the same line-make must name the proposed additional franchisee and must identify by legal description or street address the additional location in the community. A change in the identity of the proposed additional franchisee or of the additional location in the community may only be accomplished by the withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a franchise for additional representation of the same line-make in the same community may be made by a franchisor within 3 calendar years of the date of final disposition of a notice of intention.

(c) If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and consultant fees incurred in resisting the proceeding.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of

business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

(a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

(b) ceasing production of the line-make; or

(c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

(9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

(i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

(ii) the higher of the fair market value of the franchise on the following dates:

(A) the effective date of the termination, cancellation, or failure to renew;

(B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

(C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

(b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

(10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

(11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in

effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 16. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections --hearing. (1) (a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district

court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the ~~verified~~ written complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 17. Section 61-4-207, MCA, is amended to read:

"61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

(a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

(g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and

(h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

- (a) a change in ownership of the franchisee's dealership;
- (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;
- (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or
- (d) the desire of a franchisor or a franchisor's representative:
 - (i) for greater market penetration; or
 - (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

- (a) amount of business transacted by other existing franchisees of the same line-make in that community;
- (b) investment necessarily made and obligations incurred by other existing franchisees of the same line-make in that community in the performance of their part of their ~~franchises~~ franchise agreements and the date of the investment made and the obligations incurred by the existing franchisees in relation to the date of appointment of the additional franchisee; and
- (c) whether the other existing franchisees of the same line-make in that community are substantially compliant with reasonable manufacturer requirements for providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment, replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make; and
- (d) whether the demographic characteristics, including population, of that community have changed sufficiently since the appointment of the other existing franchisees to support the economic viability of both the other existing franchisees and the additional franchisee."

Section 18. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [section 4].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0617, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 617
INTRODUCED BY B. USHER

AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on February 26, 2019 at 8:00 A.M., in Room 172
Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Vince Ricci, Vice Chair (R)
Rep. Sharon Stewart Peregoy, Vice Chair (D)
Rep. Fred Anderson (R)
Rep. Neil Duram (R)
Rep. Ross H. Fitzgerald (R)
Rep. Moffie Funk (D)
Rep. Bruce Grubbs (R)
Rep. Steve Gunderson (R)
Rep. Derek J. Harvey (D)
Rep. Joel G. Krautter (R)
Rep. Denley M. Loge (R)
Rep. Gordon Pierson Jr (D)
Rep. Christopher Pope (D)
Rep. Katie Sullivan (D)
Rep. Sue Vinton (R)

Members Excused:

Rep. Edward Buttrey (R)
Rep. Willis Curdy (D)
Rep. Andrea Olsen (D)

Members Absent: None

Staff Present: Joanne Kauzlarich, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 515, 2/21/2019; HB 572, 2/21/2019; HB 579, 2/21/2019; HB 617, 2/24/2019

Executive Action: HB 523, HB 562, HB 569, HB 572, HB 578, HB 579, HB 581, HB 617

08:02:25 Chair Noland
08:04:06 Rep. Olsen and Rep. Buttrey joined the meeting.

HEARING ON HB 617

Opening Statement by Sponsor:

08:04:42 Rep. Barry Usher (R), HD 40, opened the hearing on HB 617, Generally revise franchise laws and automobile franchise laws.

[**EXHIBIT\(buh41a01\)**](#)

Proponents' Testimony:

08:09:02 Bruce Knudsen, Montana Auto Dealers Association (MTADA)
08:11:18 Donald Kaltschmidt, Montana Auto Dealers Association (MTADA)
08:15:51 Eric Henricksen, Self
08:18:37 Robbie Smith, Self
08:20:19 Jim Stanger, Self

[**EXHIBIT\(buh41a02\)**](#)

08:29:21 Scott Reichner, Montana Auto Dealers Association (MTADA)
08:32:55 Bill Dee, Self
08:38:35 Stuart Doggett, Montana Manufactured Housing and RV Dealers (MMH&RV)

Opponents' Testimony:

08:39:34 John MacDonald, Alliance of Automobile Manufacturers
08:46:16 Rep. Buttrey left the meeting.
08:53:39 Rep. Olsen left the meeting.

Informational Testimony:

08:55:54 Sarah Garcia, Motor Vehicle Division (MVD)

Questions from Committee Members and Responses:

08:56:23 Rep. Pierson
08:56:54 Scott Reichner, MTADA
08:59:56 Rep. Pierson
09:00:36 Donald Kaltschmidt, MTADA
09:02:04 Rep. Pierson
09:02:21 Donald Kaltschmidt, MTADA
09:02:51 Rep. Pierson
09:03:07 John MacDonald, Alliance of Automobile Manufacturers
09:03:16 Rep. Pierson
09:03:28 John MacDonald, Alliance of Automobile Manufacturers
09:04:00 Rep. Pierson
09:04:22 Bruce Knudsen, MTADA
09:04:50 Rep. Vinton
09:05:54 Bill Dee, Self
09:08:00 Rep. Gunderson
09:08:52 Donald Kaltschmidt, MTADA
09:09:00 Rep. Loge
09:09:33 Eric Henricksen, Self
09:10:12 Rep. Loge

09:10:41 Eric Henricksen, Self
09:11:12 Rep. Loge
09:11:16 Eric Henricksen, Self
09:11:28 Rep. Pope
09:12:41 Donald Kaltschmidt, MTADA
09:14:43 Rep. Loge
09:15:20 Bruce Knudsen, MTADA

Closing by Sponsor:

09:16:41 Rep. Usher

HEARING ON HB 515**Opening Statement by Sponsor:**

09:24:45 Rep. Barry Usher (R), HD 40, opened the hearing on HB 515, Generally revise motor vehicle laws.

[EXHIBIT\(buh41a03\)](#)

09:24:57 Rep. Buttrey rejoined the meeting.

Proponents' Testimony:

09:26:34 Sarah Garcia, Motor Vehicle Division (MVD)

Opponents' Testimony:

09:38:51 Spook Stang, Motor Carriers of Montana (MCM)

Informational Testimony: None**Questions from Committee Members and Responses:**

09:40:47 Rep. Krautter
09:41:11 Rep. Curdy joined the meeting.
09:41:27 Sarah Garcia, MVD
09:42:00 Rep. Krautter
09:42:15 Sarah Garcia, MVD
09:42:33 Chair Noland
09:43:06 Sarah Garcia, MVD
09:44:06 Rep. Duram
09:44:37 Sarah Garcia, MVD
09:46:00 Michele Snowberger, Motor Vehicles Division (MVD)
09:48:18 Rep. Duram
09:48:31 Michele Snowberger, MVD
09:48:39 Vice Chair Ricci
09:48:57 Sarah Garcia, MVD
09:49:05 Rep. Gunderson
09:49:35 Sarah Garcia, MVD
09:50:20 Rep. Gunderson
09:50:28 Sarah Garcia, MVD
09:50:54 Rep. Loge
09:51:01 Rep. Harvey left the meeting.
09:51:16 Rep. Usher

09:51:39 Rep. Loge
09:51:44 Rep. Usher

Closing by Sponsor:

09:52:32 Rep. Usher

09:56:45 Vice Chair Ricci left the meeting.

HEARING ON HB 572

Opening Statement by Sponsor:

09:57:56 Rep. Denise Hayman (D), HD 66, opened the hearing on HB 572, Revise real estate broker and salesperson laws.

[EXHIBIT\(buh41a04\)](#)

Proponents' Testimony: None

Opponents' Testimony:

10:04:39 Mark Simonich, Montana Association of Realtors (MAR)
10:11:09 Mike Nugent, Self

Informational Testimony:

10:16:09 Nick Hill, Legislative Audit Division (LAD)

Questions from Committee Members and Responses:

10:16:46 Rep. Buttrey
10:17:04 Rep. Vinton
10:17:45 Rep. Hayman
10:19:41 Chair Noland
10:20:41 Mark Simonich, MAR
10:24:11 Chair Noland
10:24:30 Rep. Hayman
10:25:35 Chair Noland
10:25:50 Rep. Hayman
10:26:42 Mark Simonich, MAR
10:27:52 Rep. Fitzgerald
10:28:40 Nick Hill, LAD
10:29:38 Rep. Fitzgerald
10:30:00 Nick Hill, LAD
10:31:09 Rep. Duram
10:31:47 Nick Hill, LAD
10:33:12 Rep. Pope
10:34:11 Nick Hill, LAD
10:35:33 Rep. Pope
10:36:27 Nick Hill, LAD

Closing by Sponsor:

10:36:43 Rep. Hayman

HEARING ON HB 579**Opening Statement by Sponsor:**

10:39:20 Rep. Edward Buttrey (R), HD 21, opened the hearing on HB 579, Revise laws relating to gambling & player information.

10:40:07 Vice Chair Ricci rejoined the meeting.

Proponents' Testimony:

10:44:01 Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA)

10:51:33 Art LaGaly, Self

10:54:38 Brock Lohman, Self

Opponents' Testimony:

10:56:18 Neil Peterson, Gaming Industry Association (GIA)

11:02:51 John Iverson, Montana Tavern Association (MTA)

Informational Testimony:

11:08:19 Angela Nunn, Department of Justice (DOJ)

Questions from Committee Members and Responses:

11:08:43 Rep. Pierson

11:09:14 Rep. Buttrey

11:09:28 Rep. Pierson

11:10:02 John Iverson, MTA

11:10:17 Rep. Grubbs

11:10:34 Angela Nunn, DOJ

11:11:10 Rep. Grubbs

11:11:20 Angela Nunn, DOJ

11:11:50 Rep. Anderson

11:12:13 Ronda Wiggers, MCMOA

11:13:09 Rep. Pope

11:13:30 John Iverson, MTA

11:14:04 Rep. Pope

11:14:35 Art LaGaly, Self

11:16:06 Rep. Duram

11:16:34 Rep. Buttrey

11:16:38 Rep. Duram

11:16:56 Rep. Buttrey

11:17:32 Rep. Duram

11:17:40 Rep. Buttrey

11:17:58 Rep. Gunderson

11:18:34 Angela Nunn, DOJ

11:19:50 Rep. Gunderson

11:20:01 Rep. Buttrey

11:21:01 Rep. Gunderson

11:21:12 Rep. Buttrey

11:21:27 Rep. Sullivan

11:21:59 Rep. Buttrey

11:23:05 Rep. Sullivan

11:23:33 Brock Lohman, Self
11:23:43 Rep. Sullivan
11:24:02 Brock Lohman, Self
11:24:23 Rep. Sullivan
11:24:40 Brock Lohman, Self
11:25:00 Ronda Wiggers, MCMOA
11:26:25 Chair Noland
11:26:57 John Iverson, MTA
11:29:05 Chair Noland
11:29:30 John Iverson, MTA
11:29:43 Chair Noland
11:29:54 John Iverson, MTA

Closing by Sponsor:

11:30:45 Rep. Buttrey

11:31:51 Rep. Gunderson left the meeting.

Committee Business:

11:33:48 Rep. Vinton
11:34:24 Vice Chair Ricci
11:34:35 Rep. Pierson
11:34:43 Chair Noland
11:36:05 Pat Murdo, Legislative Services Division (LSD)

[EXHIBIT\(buh41a05\)](#)

[EXHIBIT\(buh41a06\)](#)

[EXHIBIT\(buh41a07\)](#)

11:39:32 Chair Noland
11:40:00 Rep. Sullivan

[EXHIBIT\(buh41a08\)](#)

11:40:15 Chair Noland
11:40:20 Rep. Sullivan
11:40:39 Rep. Duram

[EXHIBIT\(buh41a09\)](#)

11:41:08 Pat Murdo, LSD
11:41:40 Rep. Krautter
11:41:46 Pat Murdo, LSD

[EXHIBIT\(buh41a10\)](#)

11:42:20 Recessed
12:17:02 Reconvened with Rep. Olsen and Rep. Gunderson present.

EXECUTIVE ACTION ON HB 572

12:17:24 **Motion:** Rep. Ricci moved that **HB 572 DO PASS.**

12:17:45 **Vote:** Motion failed 5-14 by roll call vote with Rep. Curdy, Rep. Duram, Rep. Olsen, Rep. Stewart Peregoy and Rep. Sullivan voting aye. Rep. Harvey voted by proxy.

12:19:29 **Motion/Vote:** Rep. Ricci moved that **HB 572 BE TABLED**. Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 579

12:20:38 **Motion/Vote:** Rep. Ricci moved that **HB 579 DO PASS**. Motion carried 11-8 by roll call vote with Rep. Anderson, Rep. Curdy, Rep. Duram, Rep. Gunderson, Rep. Harvey, Rep. Olsen, Rep. Pierson and Rep. Vinton voting no. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 617

12:22:35 **Motion/Vote:** Rep. Ricci moved that **HB 617 DO PASS**. Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 523

12:23:27 **Motion:** Rep. Ricci moved that **HB 523 DO PASS**.

12:23:37 **Motion:** Rep. Sullivan moved that **HB 523 BE AMENDED**.
(See Exhibit 5)

Discussion:

12:24:01 Rep. Sullivan

12:25:05 Rep. Vinton

12:25:36 **Vote:** Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

12:25:46 **Motion/Vote:** Rep. Ricci moved that **HB 523 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 562

12:26:19 **Motion:** Rep. Ricci moved that **HB 562 DO PASS**.

12:26:38 **Motion:** Rep. Grubbs moved that **HB 562 BE AMENDED**.
[EXHIBIT\(buh41a11\)](#)

Discussion:

12:26:58 Rep. Grubbs

12:27:38 **Vote:** Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

12:27:52 **Motion:** Rep. Ricci moved that **HB 562 DO PASS AS AMENDED**.

Discussion:

12:28:03 Rep. Olsen
12:29:01 Rep. Grubbs
12:29:40 Rep. Olsen
12:30:41 Rep. Grubbs

12:31:04 **Vote:** Motion carried 14-5 by roll call vote with Rep. Krautter, Rep. Noland, Rep. Olsen, Rep. Stewart Peregoy and Rep. Sullivan voting no. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 569

12:33:02 **Motion:** Rep. Ricci moved that **HB 569 DO PASS.**

12:33:21 **Motion:** Rep. Krautter moved that **HB 569 BE AMENDED.**
(See Exhibit 6)

Discussion:

12:34:00 Rep. Krautter
12:34:42 Rep. Duram

12:34:57 **Vote:** Motion carried 13-6 by roll call vote with Rep. Duram, Rep. Gunderson, Rep. Noland, Rep. Ricci, Rep. Stewart Peregoy and Rep. Vinton voting no. Rep. Harvey voted by proxy.

12:36:21 **Motion:** Rep. Ricci moved that **HB 569 DO PASS AS AMENDED.**

Discussion:

12:36:31 Rep. Gunderson

12:36:45 **Substitute Motion/Vote:** Rep. Gunderson made a substitute motion that **HB 569 BE TABLED.** Substitute Motion carried 12-7 by roll call vote with Rep. Funk, Rep. Harvey, Rep. Krautter, Rep. Olsen, Rep. Pierson, Rep. Pope and Rep. Sullivan voting no. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 578

12:38:20 **Motion:** Rep. Ricci moved that **HB 578 DO PASS.**

12:38:37 **Motion:** Rep. Buttrey moved that **HB 578 BE AMENDED.**
(See Exhibit 7)

Discussion:

12:38:57 Rep. Buttrey
12:39:38 Pat Murdo, LSD

12:40:51 **Vote:** Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

12:41:07 **Motion/Vote:** Rep. Ricci moved that **HB 578 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

EXECUTIVE ACTION ON HB 581

12:41:49 **Motion/Vote:** Rep. Ricci moved that **HB 581 DO PASS**. Motion carried unanimously by voice vote. Rep. Harvey voted by proxy.

Committee Business:

12:42:34 Rep. Sullivan

EXECUTIVE ACTION ON HB 501

12:42:51 **Motion/Vote:** Rep. Sullivan moved that **HB 501 BE REMOVED FROM TABLE**. Motion failed 8-10 by roll call vote with Rep. Curdy, Rep. Fitzgerald, Rep. Funk, Rep. Grubbs, Rep. Olsen, Rep. Pierson, Rep. Pope and Rep. Sullivan voting aye.

EXECUTIVE ACTION ON HB 185

12:44:57 **Motion/Vote:** Rep. Duram moved that **HB 185 BE REMOVED FROM TABLE**. Motion failed 6-12 by roll call vote with Rep. Duram, Rep. Funk, Rep. Grubbs, Rep. Olsen, Rep. Pope and Rep. Sullivan voting aye.

EXECUTIVE ACTION ON HB 140

12:46:36 **Motion/Vote:** Rep. Krautter moved that **HB 140 BE REMOVED FROM TABLE**. Motion failed 7-11 by roll call vote with Rep. Curdy, Rep. Funk, Rep. Grubbs, Rep. Krautter, Rep. Olsen, Rep. Pope and Rep. Sullivan voting aye.

12:48:15 Rep. Vinton

ADJOURNMENT

Adjournment: 12:48:25

Joanne Kauzlarich, Secretary

jk

Additional Documents:

EXHIBIT([buh41aad.pdf](#))

January 2019



No Retail: CA and KS have bills this legislative session

66th LEGISLATURE 2019 SESSION

Additional Documents

Business Page

Proxies

Roll Call

Witness Statements

Standing Committee
Reports

Informational items
Visitor Registrations

Table Bills

Any Document or
material presented
after the meeting for
example@ petitions,
news clippings ectara.

Fiscal reports

Tabled Bills

Roll Call Votes

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
66th LEGISLATURE - REGULAR SESSION**

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Tuesday, February 26, 2019

Place: Capitol

Time: 8:00 A.M.

Room: 172

BILLS and RESOLUTIONS HEARD:

HB 515 - Generally revise motor vehicle laws - Rep. Barry Usher

HB 572 - Revise real estate broker and salesperson laws - Rep. Denise Hayman

HB 579 - Revise laws relating to gambling & player information - Rep. Edward Buttrey

HB 617 - Generally revise franchise laws and automobile franchise laws - Rep. Barry Usher

EXECUTIVE ACTION TAKEN:

HB 523 - Do Pass As Amended

HB 562 - Do Pass As Amended

HB 569 - Tabled

HB 572 - Tabled

HB 578 - Do Pass As Amended

HB 579 - Do Pass

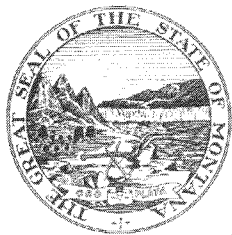
HB 581 - Do Pass

HB 617 - Do Pass

Comments:



REP. Mark Noland, Chair



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL

DATE: February 26, 2019

NAME	PRESENT	ABSENT/EXCUSED
REP. NOLAND, CHAIR	✓	
REP. RICCI, VICE CHAIR	✓	
REP. STEWART PEREGOY, VICE CHAIR	✓	
REP. ANDERSON	✓	
REP. BUTTREY		✓
REP. CURDY		✓
REP. DURAM	✓	
REP. FITZGERALD	✓	
REP. FUNK	✓	
REP. GRUBBS	✓	
REP. GUNDERSON	✓	
REP. HARVEY	✓	
REP. KRAUTTER	✓	
REP. LOGE	✓	
REP. OLSEN		✓
REP. PIERSON	✓	
REP. POPE	✓	
REP. SULLIVAN	✓	
REP. VINTON	✓	

19 MEMBERS



HOUSE STANDING COMMITTEE REPORT

February 26, 2019

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 579** (first reading copy -- white) **do pass**.

Signed: Mark Noland
Representative Mark Noland, Chair

- END -

Committee Vote:

Yes 11, No 8

Fiscal Note Required X

HB0579001SC.h1c

113
2.26
2.25



HOUSE STANDING COMMITTEE REPORT

February 26, 2019

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 617** (first reading copy -- white) **do pass**.

Signed: Mark Noland
Representative Mark Noland, Chair

- END -

Committee Vote:

Yes 19, No 0

Fiscal Note Required ☐

HB0617001SC.hlc

NS
2.26
No FNP



HOUSE STANDING COMMITTEE REPORT

February 26, 2019

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 523** (first reading copy -- white) **do pass as amended.**

Signed: *Mark Noland*
Representative Mark Noland, Chair

And, that such amendments read:

1. Title, page 1, line 7 through line 8.

Strike: "ADDING" on line 7 through "BUSINESSES;" on line 8

2. Page 1, line 18.

Following: "services"

Strike: "for rural-based" through "women-owned"

Insert: "to the extent possible within existing resources to help all"

3. Page 1, line 21.

Following: "state"

Insert: "in the most cost-effective manner possible"

4. Page 4, line 7.

Strike: "formerly might have faced disadvantages"

Insert: ", due to lack of economic development resources, might benefit from this policy"

5. Page 6, line 9 through line 10.

Following: "workforce development" on line 9

Strike: "L" on line 9 through "businesses" on line 10

Insert: "for businesses in this state"

Committee Vote:

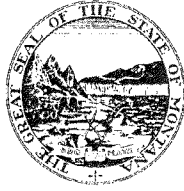
Yes 19, No 0

Fiscal Note Required X

HB0523001SC.hlc

Handwritten: 2/26/19
2:25

- END -



HOUSE STANDING COMMITTEE REPORT

February 26, 2019

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 562** (first reading copy -- white) **do pass as amended**.

Signed: Mark Noland
Representative Mark Noland, Chair

And, that such amendments read:

1. Page 1, line 20.

Strike: "uninsured motorist, underinsured motorist, and medical payment"

- END -

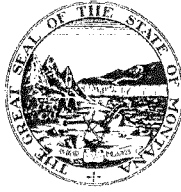
Committee Vote:

Yes 14, No 5

Fiscal Note Required ☐

HB0562001SC.hlc

1/3
2.26



HOUSE STANDING COMMITTEE REPORT

February 26, 2019

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 578** (first reading copy -- white) **do pass as amended**.

Signed: Mark Noland

Representative Mark Noland, Chair

And, that such amendments read:

1. Title, page 1, line 5.

Following: "TYPES OF DISABILITY"

Insert: "INCOME"

Following: the second "DISABILITY"

Insert: "INCOME"

2. Page 2, line 8 through line 15.

Strike: subsection (g) in its entirety

Insert: "(g)(i) "Disability income insurance" has the meaning provided in 33-1-235 for:

(A) individuals employed in professional sports or the entertainment industry; or

(B) a business entity insuring a principal to cover liability or provide assurance for the business entity's loans or contracts.

(ii) Disability income insurance sold on the surplus lines market must be unavailable from or limited by an authorized insurer."

3. Page 4, line 27 through line 28.

Strike: "and must contain"

Insert: "for"

Strike: "that are covered" on line 28

Following: "disability"

Committee Vote:

Yes 19, No 0

Fiscal Note Required ☐

HB0578001SC.hlc

13
226
No PNP

Insert: "income"

Strike: "as defined in" on line 27 through "33-2-301" on line 28

- END -



HOUSE STANDING COMMITTEE REPORT

February 26, 2019

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 581** (first reading copy -- white) **do pass**.

Signed: Mark Noland
Representative Mark Noland, Chair

- END -

Committee Vote:

Yes 19, No 0

Fiscal Note Required ☐

HB0581001SC.hlc

13
2.26
2.26

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE BUSINESS AND LABOR COMMITTEE

The HOUSE BUSINESS AND LABOR COMMITTEE TABLED

HB 569 - Increase motor vehicle liability policy minimums - Rep. Zach Brown

HB 572 - Revise real estate broker and salesperson laws - Rep. Denise Hayman

by motion, on **Tuesday, February 26, 2019** (PLEASE USE THIS ACTION DATE IN LAWS
BILL STATUS).



(For the Committee)

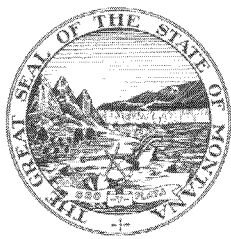


(For the Chief Clerk of the House)

1:08 / 2.26
(Time) (Date)

February 26, 2019 (12:57pm) Joanne Kauzlarich, Secretary

Phone: 444-2554



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

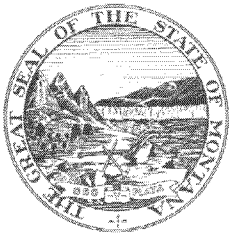
BILL NUMBER HB 572

DATE 2.26.2019

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR		✓	
REP. RICCI, VICE CHAIR		✓	
REP. STEWART PEREGOY, VICE CHAIR	✓		
REP. ANDERSON		✓	
REP. BUTTREY		✓	
REP. CURDY	✓		
REP. DURAM	✓		
REP. FITZGERALD		✓	
REP. FUNK		✓	
REP. GRUBBS		✓	
REP. GUNDERSON		✓	
REP. HARVEY		✓	✓
REP. KRAUTTER		✓	
REP. LOGE		✓	
REP. OLSEN	✓		
REP. PIERSON		✓	
REP. POPE		✓	
REP. SULLIVAN	✓		
REP. VINTON		✓	

19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

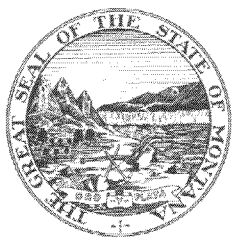
BILL NUMBER HB 579

DATE 2.26.2019

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR	✓		
REP. RICCI, VICE CHAIR	✓		
REP. STEWART PEREGOY, VICE CHAIR	✓		
REP. ANDERSON		✓	
REP. BUTTREY	✓		
REP. CURDY		✓	
REP. DURAM		✓	
REP. FITZGERALD	✓		
REP. FUNK	✓		
REP. GRUBBS	✓		
REP. GUNDERSON		✓	
REP. HARVEY		✓	✓
REP. KRAUTTER	✓		
REP. LOGE	✓		
REP. OLSEN		✓	
REP. PIERSON		✓	
REP. POPE	✓		
REP. SULLIVAN	✓		
REP. VINTON		✓	

19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 562

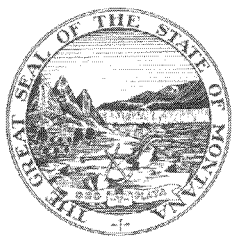
DATE 2.26.2019

MOTION Do Pass As Amended

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR		✓	
REP. RICCI, VICE CHAIR	✓		
REP. STEWART PEREGOY, VICE CHAIR		✓	
REP. ANDERSON	✓		
REP. BUTTREY	✓		
REP. CURDY	✓		
REP. DURAM	✓		
REP. FITZGERALD	✓		
REP. FUNK	✓		
REP. GRUBBS	✓		
REP. GUNDERSON	✓		
REP. HARVEY	✓		✓
REP. KRAUTTER		✓	
REP. LOGE	✓		
REP. OLSEN		✓	
REP. PIERSON	✓		
REP. POPE	✓		
REP. SULLIVAN		✓	
REP. VINTON	✓		

14 5 1

19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 569

DATE 2.26.2019

MOTION Be Amended

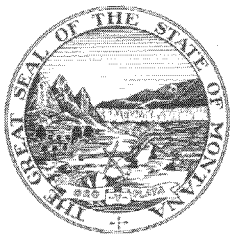
NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR		✓	
REP. RICCI, VICE CHAIR		✓	
REP. STEWART PEREGOY, VICE CHAIR		✓	
REP. ANDERSON	✓		
REP. BUTTREY	✓		
REP. CURDY	✓		
REP. DURAM		✓	
REP. FITZGERALD	✓		
REP. FUNK	✓		
REP. GRUBBS	✓		
REP. GUNDERSON		✓	
REP. HARVEY	✓		✓
REP. KRAUTTER	✓		
REP. LOGE	✓		
REP. OLSEN	✓		
REP. PIERSON	✓		
REP. POPE	✓		
REP. SULLIVAN	✓		
REP. VINTON		✓	

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19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

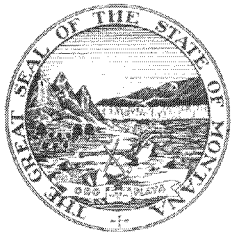
BILL NUMBER HB 569

DATE 2.26.2019

MOTION Be Tabled

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR	✓		
REP. RICCI, VICE CHAIR	✓		
REP. STEWART PEREGOY, VICE CHAIR	✓		
REP. ANDERSON	✓		
REP. BUTTREY	✓		
REP. CURDY	✓		
REP. DURAM	✓		
REP. FITZGERALD	✓		
REP. FUNK		✓	
REP. GRUBBS	✓		
REP. GUNDERSON	✓		
REP. HARVEY		✓	✓
REP. KRAUTTER		✓	
REP. LOGE	✓		
REP. OLSEN		✓	
REP. PIERSON		✓	
REP. POPE		✓	
REP. SULLIVAN		✓	
REP. VINTON	✓		

19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 501

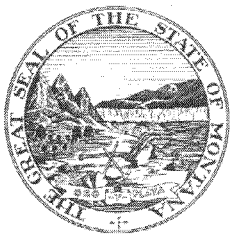
DATE 2.26.2019

MOTION Be Removed from Table

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR		✓	
REP. RICCI, VICE CHAIR		✓	
REP. STEWART PEREGOY, VICE CHAIR		✓	
REP. ANDERSON		✓	
REP. BUTTREY		✓	
REP. CURDY	✓		
REP. DURAM		✓	
REP. FITZGERALD	✓		
REP. FUNK	✓		
REP. GRUBBS	✓		
REP. GUNDERSON		✓	
REP. HARVEY	—		absent
REP. KRAUTTER		✓	
REP. LOGE		✓	
REP. OLSEN	✓		
REP. PIERSON	✓		
REP. POPE	✓		
REP. SULLIVAN	✓		
REP. VINTON		✓	

8 10

19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 185

DATE 2.26.2019

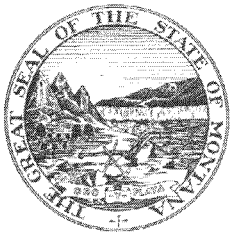
MOTION Be Removed from Table

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR		✓	
REP. RICCI, VICE CHAIR		✓	
REP. STEWART PEREGOY, VICE CHAIR		✓	
REP. ANDERSON		✓	
REP. BUTTREY		✓	
REP. CURDY		✓	
REP. DURAM	✓		
REP. FITZGERALD		✓	
REP. FUNK	✓		
REP. GRUBBS	✓		
REP. GUNDERSON		✓	
REP. HARVEY	—		absent
REP. KRAUTTER		✓	
REP. LOGE		✓	
REP. OLSEN	✓		
REP. PIERSON		✓	
REP. POPE	✓		
REP. SULLIVAN	✓		
REP. VINTON		✓	

6

12

19 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 140

DATE 2.26.2019

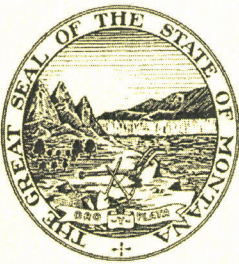
MOTION Be Removed from Table

NAME	AYE	NO	PROXY
REP. NOLAND, CHAIR		✓	
REP. RICCI, VICE CHAIR		✓	
REP. STEWART PEREGOY, VICE CHAIR		✓	
REP. ANDERSON		✓	
REP. BUTTREY		✓	
REP. CURDY	✓		
REP. DURAM		✓	
REP. FITZGERALD		✓	
REP. FUNK	✓		
REP. GRUBBS	✓		
REP. GUNDERSON		✓	
REP. HARVEY	—		absent
REP. KRAUTTER	✓		
REP. LOGE		✓	
REP. OLSEN	✓		
REP. PIERSON		✓	
REP. POPE	✓		
REP. SULLIVAN	✓		
REP. VINTON		✓	

7

11

19 MEMBERS



The Big Sky Country

Derek Harvey

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 66TH LEGISLATIVE SESSION

I request to be excused from the B+2 Committee.

I desire to leave my proxy vote with Rep. Pierson.

BILL	AYE	NO
HB 617 do pass	X	
HB 579 do pass		X
HB 572 do pass	X	X
HB 523 do pass	X	
HB 562 do pass	X	X
HB 578 do pass	X	
HB 581 do pass	X	
HB 569 do pass table	X	X
HB 580 untable	X	

BILL	AYE	NO
Tabled	X	
Amend 523 03 AM	X	
Amend 562 01 PM	X	
Amend 578 01 apm	X	
Amend 569 01 apm	X	

I authorize my vote to be matched with that of Rep. Pierson
for any amendments proposed on this date.

Rep. Derek Harvey
(Signature)

Date 2/26/19

MONTANA House of Representatives

HOUSE BUSINESS AND LABOR COMMITTEE

Tuesday, February 26, 2019

HB 617 - Generally revise franchise laws and automobile franchise laws

Sponsor: Rep. Barry Usher

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE**

Tuesday, February 26, 2019

HB 515 - Generally revise motor vehicle laws

Sponsor: Rep. Barry Usher

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Tuesday, February 26, 2019

HB 572 - Revise real estate broker and salesperson laws

Sponsor: **Rep. Denise Hayman**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives Visitors Register

Tuesday, February 26, 2019

HB 579 - Revise laws relating to gambling & player information

Sponsor: Rep. Edward Buttrey

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Amendments to House Bill No. 185
1st Reading Copy

Requested by Representative Neil Duram

For the House Business and Labor Committee

Prepared by Pat Murdo
February 26, 2019 (11:51am)

1. Title, page 1, line 4.

Following: "HOURS FOR"

Insert: "CERTAIN"

2. Page 1, line 20.

Following: "(b)"

Insert: "(i)"

Strike: "A"

Insert: "Except as provided in subsection (2)(b)(ii), a"

3. Page 1, line 23.

Strike: "10"

Insert: "8"

4. Page 1.

Following: line 25

Insert: "(ii) From May 1 through October 1 a small brewery that is more than a mile from any other license holder under this title may provide or sell samples from 10 a.m. to 10 p.m. The samples may not be greater than those provided under subsection (2)(b)(i) nor comprise more barrels provided than the amount listed in subsection (2)(b)(i)."

- END -

MINUTES

MONTANA SENATE 66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on March 19, 2019 at 8:30 AM, in Room 422 Capitol

ROLL CALL

Members Present:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Dee Brown, Vice Chair (R)
Sen. Sue Malek, Vice Chair (D)
Sen. Carlie Boland (D)
Sen. Jason W. Ellsworth (R)
Sen. Terry Gauthier (R)
Sen. Jason D. Small (R)
Sen. Frank Smith (D)
Sen. Gordon Vance (R)
Sen. Gene Vuckovich (D)

Members Excused: None

Members Absent: None

Staff Present: Linda Keim, Committee Secretary
Jameson Walker, Legislative Services Division

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 617, 3/13/2019; SB 325, 3/13/2019; SB 330, 3/13/2019; SR 43, 3/13/2019

08:30:37 Chairman Fitzpatrick

HEARING ON HB 617

Opening Statement by Sponsor:

08:31:30 Rep. Barry Usher (R), HD 40, opened the hearing on HB 617. Generally revise franchise laws and automobile franchise laws.

EXHIBIT(bus56a01)

Proponents' Testimony:

08:37:13 Bruce Knudsen, executive vice president, Montana Auto Dealers Association (MTADA)
 08:39:02 Don Kaltschmidt, MTADA
 08:43:16 Jim Stanger, owner, domestic and import franchise, Montana Auto Dealers Association
 08:48:19 Eric Henricksen, family business owner, Montana Auto Dealers Association
 08:51:06 Robbie Smith, family owned business, Billings and Hardin, Montana Auto Dealers Association
 08:53:57 Matt Waller, former domestic auto dealer, Northern Ford
 08:55:35 Stuart Doggett, lobbyist, Montana Manufactured Housing and RV Dealers
 08:56:10 Bill Dee, owner, new and used automobile dealership, Dee Motors, Anaconda
 08:58:45 Scott Reichner, lobbyist, Montana Auto Dealers Association

Opponents' Testimony:

09:01:27 Jonathan Emmanuel, assistant general counsel, Reynolds and Reynolds Company (RRC)
 09:06:51 John MacDonald, lobbyist, Alliance for Automobile Manufacturers (AAM)
 09:26:16 Glenn Oppel, CDK Global

EXHIBIT(bus56a02)

Informational Testimony:

09:27:36 Joann Loehr, Legislative Services Bureau chief, Motor Vehicle Division, Department of Justice

Questions from Committee Members and Responses:

09:28:01 Sen. Brown
 09:31:43 Mr. MacDonald, AAM
 09:33:10 Sen. Brown
 09:34:10 Mr. Waller, self
 09:37:06 Mr. Kaltschmidt, MTADA
 09:37:15 Sen. Ellsworth
 09:40:27 Mr. Emmanuel, RRC
 09:41:04 Sen. Ellsworth
 09:41:48 Mr. Waller, redirect
 09:42:04 Sen. Ellsworth
 09:45:20 Mr. Smith, self
 09:45:54 Sen. Vance
 09:49:22 Mr. Kaltschmidt
 09:49:43 Sen. Malek
 09:53:22 Mr. MacDonald

09:54:50 Sen. Gauthier
09:59:21 Mr. MacDonald
10:00:34 Sen. Gauthier
10:01:11 Mr. Stanger, self
10:01:23 Sen. Smith
10:02:08 Mr. Knudsen, MTADA
10:02:31 Sen. Malek
10:03:15 Mr. Dee, self
10:07:23 Sen. Gauthier
10:07:44 Mr. Dee

Closing by Sponsor:

10:08:2 Rep. Usher

EXHIBIT(bus56a03)

10:14:10 Chairman Fitzpatrick

Chairman Fitzpatrick passed the duties of the Chair to Vice Chair Brown.

10:14:57 Chair Brown

HEARING ON SR 43

Opening Statement by Sponsor:

10:15:00 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SR 43. Confirm Governor's appointee for Director, Dept. of Commerce.

Proponents' Testimony:

10:16:11 Tara Rice, nominee
10:20:12 Steve Arveschoug, executive director, Big Sky Economic Development;
president, Montana Economic Development Association (MEDA)
10:21:34 Tim Burton, executive director, Montana League of Cities and Towns

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

10:23:18 Chair Brown
10:23:55 Mr. Arveschoug, MEDA
10:25:32 Chair Brown
10:26:05 Ms. Rice, nominee
10:27:26 Sen. Ellsworth
10:28:21 Ms. Rice
10:28:57 Sen. Gauthier
10:29:55 Ms. Rice
10:30:34 Chair Brown
10:30:38 Sen. Malek
10:33:38 Ms. Rice
10:34:21 Sen. Gauthier

10:35:49 Ms. Rice
10:36:13 Chair Brown
10:37:23 Ms. Rice

Closing by Sponsor:

10:38:53 Sen. Fitzpatrick

10:39:04 Chair Brown

HEARING ON SB 325

Opening Statement by Sponsor:

10:39:25 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 325. Create the Montana Business Corporation Act.

Proponents' Testimony:

10:42:07 Kristen Juras, committee chair, Business, Estate, Trust, Tax, and Real Property Section, Montana State Bar (MSB)

[EXHIBIT\(bus56a04\)](#)

[EXHIBIT\(bus56a05\)](#)

10:54:42 Vincent Kalafat, attorney, Crowley Fleck PLLP

[EXHIBIT\(bus56a06\)](#)

11:01:47 Joe DeFilippis, chief legal counsel, Office of the Secretary of State (SOS)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

11:03:13 Sen. Ellsworth
11:03:23 Mr. DeFilippis, SOS defer
11:04:28 Ms. Juras, MSB
11:05:30 Chair Brown
11:05:51 Ms. Juras
11:06:32 Chair Brown
11:06:59 Mr. Kalafat
11:07:31 Sen. Malek
11:08:48 Mr. Kalafat
11:09:21 Sen. Malek
11:11:41 Sen. Fitzpatrick defer
11:12:38 Ms. Juras
11:12:42 Sen. Ellsworth
11:14:00 Mr. Kalafat
11:14:10 Sen. Malek
11:20:04 Ms. Juras

Closing by Sponsor:

11:20:23 Sen. Steve Fitzpatrick

11:21:22 Chair Brown

Sen. Fitzpatrick resumed the duties of the chair.

11:23:10 Chairman Fitzpatrick

HEARING ON SB 330

Opening Statement by Sponsor:

11:23:32 Sen. Mark Blasdel (R), SD 4, opened the hearing on SB 330. Authorize sports gambling act.

Proponents' Testimony:

11:26:41 Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA)

[EXHIBIT\(bus56a07\)](#)

11:31:07 Danielle Boyd, William Hill Company

11:36:13 Travis Woltermann, vice president, Golden Entertainment, Inc.; vice president, Montana Coin Machine Operators Association (MCMOA)

11:37:48 Neil Peterson, executive director, Gaming Industry Association of Montana

11:42:32 John Iverson, Montana Tavern Association

Opponents' Testimony: None

Informational Testimony:

11:51:32 Angela Nunn, administrator, Gambling Control Division, Department of Justice (DOJ)

11:52:31 Brad Longcake, executive director, Montana Council on Problem Gambling (MCPG)

[EXHIBIT\(bus56a08\)](#)

Questions from Committee Members and Responses:

11:54:08 Sen. Brown

11:54:41 Ms. Nunn, DOJ

11:55:12 Sen. Brown

11:55:31 Sen. Blasdel

11:56:21 Sen. Ellsworth

11:57:36 Mr. Longcake, MCPG

11:58:28 Sen. Malek

11:58:31 Ms. Nunn

11:58:51 Sen. Malek

11:58:55 Mr. Woltermann, MCMOA defer

12:02:32 Ms. Wiggers, MCMOA

12:03:35 Chairman Fitzpatrick

12:03:44 Sen. Brown

12:04:12 Ms. Wiggers

12:05:50 Sen. Ellsworth

Closing by Sponsor:

12:06:10 Sen. Blasdel

ADJOURNMENT

Adjournment: 12:07 PM

Linda Keim, Secretary

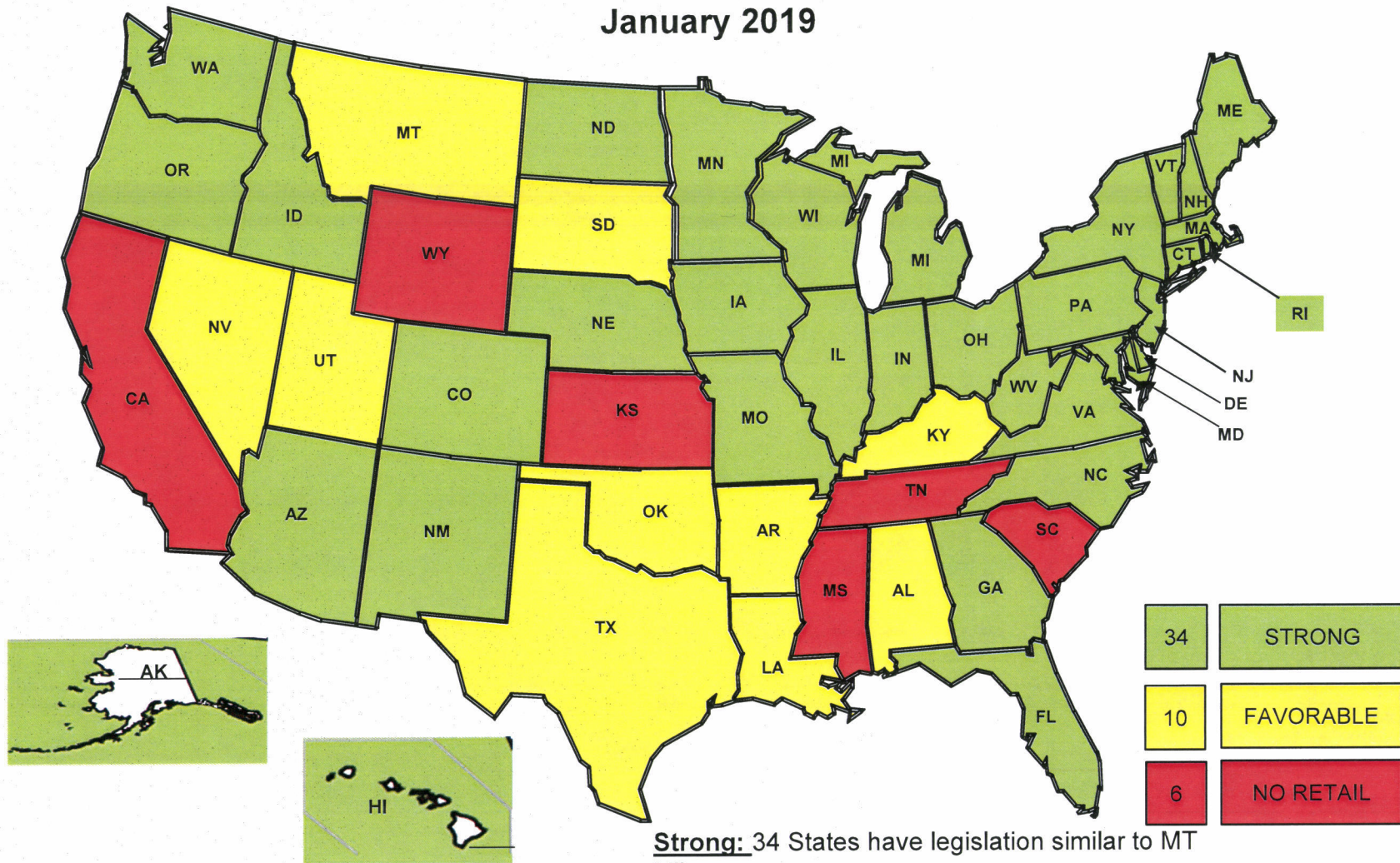
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Additional Documents:

EXHIBIT([bus56aad.pdf](#))

STRENGTH OF STATE STATUTES

January 2019



Strong: 34 States have legislation similar to MT bill.

Favorable: 10 states (including MT) require retail, but do not have a specific sample, formula, or exclusions defined.

No Retail: CA and KS have bills this legislative session

BUSINESS & LABOR
EXHIBIT NO. 1
DATE 3/19/19
BILL NO. H13617

March 18, 2019

The Honorable Steve Fitzpatrick
Chair, Senate Business, Labor, and Economic Affairs Committee
State Capitol
Helena, Montana

RE: HB 617 – AN ACT GENERALLY REVISING FRANCHISE – OPPOSE

Dear Senator Fitzpatrick:

Global Automakers, www.globalautomakers.org, is writing to inform you of **our opposition to HB 617**, a bill that seeks to implement numerous substantive and wide-ranging changes to Montana's automobile franchise law.

Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our goal is to foster an open and competitive automotive marketplace and to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet.

Our Position

On behalf of our members, Global Automakers opposes HB 617. Sections 1, 2, and 3 of the bill seek to prohibit manufacturers from obtaining important consumer data from dealers. If enacted, it would be harmful to Montana consumers as it will prevent customers from receiving valuable information from manufacturers concerning their vehicles. For example, "Protected dealer data," as defined in HB 617, is overbroad as it includes any nonpublic consumer information and "any other data regarding a dealer's business operations that is stored in the dealer's dealer data system." This definition would encompass retail delivery reports, service data, telematics data emitted by an automobile that is merely accessible by a dealer, and automobile diagnostic data. Under this legislation, manufacturers would be prohibited from accessing all Protected dealer data without the dealer's consent and a manufacturer's use of this data is severely and unfairly limited by this proposed legislation.

Consumers should be able to receive information concerning, among other things, the availability of accessories, parts, services, product enhancements and/or improvements, accessibility-related information for persons with disabilities, software updates and many other topics of interest to consumers. Consumers expect to receive such information from the manufacturers and appreciate having a point of contact with the manufacturer. In order to provide this information to consumers, manufacturers need dealers to provide access to consumer data in their possession. HB 617, as drafted, prohibits manufacturers from obtaining this important data from dealers and providing it to consumers. Because the bill is overbroad, vague and ambiguous, it may also hamper a manufacturer's ability to contact consumers concerning vehicle safety recalls, thus compromising consumer safety. HB 617 has nothing to do with protecting consumer privacy; instead, it has everything to do with dealers attempting to hoard customer data for their own profit to the detriment of manufacturers and consumers.

At a minimum, Global Automakers requests that HB 617 be re-drafted to include a provision stating that a manufacturer may not require a dealer to share protected dealer data from the dealer's data system "unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for reasonable marketing purposes, for evaluation of dealer performance, for analytics or for the submission to the manufacturer for any services supplied by the dealer for any claim for warranty parts or repairs."

This language has been enacted by Delaware (*see* Del. Code Ann. tit. 6, § 4913(a)(13)), and strikes an appropriate balance between protecting consumer privacy and allowing manufacturers to access data for important business reasons that will benefit consumers. Moreover, HB 617 should include a provision that it “shall not limit the manufacturer’s ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.”

Sections 4 and 14 of the bill seek to introduce a complete overhaul to Montana’s warranty reimbursement statute. Under current law, a manufacturer “shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer’s product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.” Mont. Code Ann. § 61-4-204(4). This provision adequately and fairly compensates dealers for warranty work. It does not need a drastic and complete overhaul. To the extent the legislature decides to amend the current law, our Members object to many of the provisions contained in Section 4, including the following:

Section 4 includes numerous exceptions for certain work that shall not be included in the calculation of the reimbursement rate for labor and parts, such as “motor vehicle franchisor special events,” “promotions,” “service campaigns,” and “vehicle reconditioning.” These exceptions will encourage dealers to increase rates to consumers for these events and items, which will result in higher service rates to the detriment of Montana consumers. Accordingly, they should be removed from the bill.

Section 4 only provides manufacturers the right to challenge a dealer’s warranty reimbursement request if the submission is “materially inaccurate.” Manufacturers should be able to challenge a submission on any ground, including general economic conditions. Moreover, this section also provides that manufacturers must respond to a dealer’s submission for warranty reimbursement within 30 days, which is a short turnaround to respond to a dealer’s request for warranty reimbursement to the prejudice of our Members. Accordingly, manufacturers should be provided 60 days to respond to a dealer’s submission for warranty reimbursement.

Section 4 would also prohibit our Members from recovering their compliance costs. Manufacturers should have the right to recover their compliance costs by increasing vehicle and parts prices. Otherwise, the economics of offering warranty coverage become threatened. Accordingly, this provision should be removed from the bill. Section 4 also prohibits our Members from influencing or attempting to influence a dealer “to implement or change the prices for which it sells parts or labor in retail repairs.” Because it is unclear what activities are prohibited and because this provision is overly broad, vague and ambiguous, it should be removed from the bill.

Lastly, Section 4 would allow a dealer to be compensated for a parts markup for parts used in performing warranty work even if the manufacturer or distributor provided the parts to the dealer at no cost or at a reduced cost. These types of parts are typically provided to address recall or similar issues and allow consumers to have their vehicles repaired more quickly and efficiently than traditional warranty repairs, without injecting unnecessary costs into the distribution system. Accordingly, this provision should be removed from the bill.

Global also objects to Section 11 of the bill relating to rights of a designated family member to succeed in dealership ownership. Under current law, a dealer may designate a family member of “a deceased or incapacitated dealer” to succeed the dealer in the ownership or operation of the dealership. Mont. Code Ann. § 61-4-132. If enacted, Section 11 would allow a dealer to designate a family member to succeed a “retiring” dealer, which will unfairly prejudice our Members. A dealer should not be able to designate any family member to succeed in ownership simply because of retirement. Instead, retiring dealers should have to comply with contractual

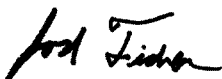
obligations concerning ownership transfers, which provide manufacturers important rights to request information relating to dealer candidates and deny transfers to unqualified individuals. And, Montana law already limits our Members' ability to withhold consent to a dealer's proposed sale or transfer of its dealership to a new operator. *See id.* § 61-4-150.

Section 11 also adds a provision to Mont. Code Ann. § 61-4-132 stating that a designated family member must meet the manufacturer's uniformly applied written requirements to be a dealer "or shall employ an individual who is qualified and experiences as a general manager to manage the day-to-day operations of the motor vehicle dealership." (Emphasis added). The alternative requirement for a designated family member to simply "employ" a qualified general manager must be stricken from the bill as family members designated as successors to a dealership must have the requisite to provide the highest quality of service to Montana customers and promote the brand and integrity of the manufacturer. It is not enough for a family member designated as a successor owner to simply "employ" a general manager who may be qualified to run a dealership.

Lastly, Global objects to certain portions of Section 15 concerning the establishment of new dealerships. Specifically, this section adds a provision that a manufacturer may not seek to establish a new dealership in the same community more than once in a three-year period. This provision unfairly impedes a manufacturer's ability to add new dealerships to serve Montana consumers as there may be circumstances where it is necessary to establish a new dealership in a community more than once every three years. For example, a voluntary or involuntary termination of a dealership may occur more than once every three years; in those circumstances, manufacturers should have the ability and right to replace those dealerships by establishing new dealerships to serve Montana consumers in those areas. Under current law, manufacturers would still have to demonstrate that good cause exists for the establishment of those dealerships. Accordingly, this provision should be stricken from the bill.

Please let us know if you have any questions.

Sincerely,



Josh Fisher
Senior Manager, State Government Affairs

Automotive News

EXHIBIT NO.

3

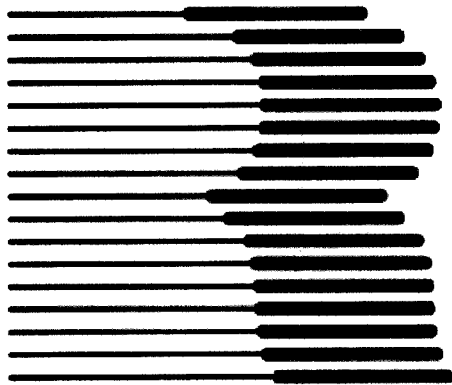
3/19/19

BILL

HB617

October 03, 2018 01:00 AM

Dealers agree to settle with Reynolds in antitrust suit

DAVID MULLER  

Reynolds & Reynolds

Reynolds and Reynolds and several dealership groups have reached an agreement in principle to settle a federal class-action antitrust lawsuit against the dealership software and services company. The agreement does not include dealership technology company CDK Global, which is also a defendant in the case.

Reynolds and Reynolds Co. and several dealership groups have reached an agreement in principle to settle a **federal class-action antitrust lawsuit** against the dealership software and services company.

A Reynolds spokesman confirmed the settlement late Tuesday. The agreement does not include dealership technology company CDK Global Inc., which is also a defendant in the case.

There are more than 25 dealers acting as plaintiffs in the suit, including early litigants such as Teterboro Automall of Little Ferry, N.J.; Hartley Buick GMC Truck of Jamestown, N.Y.; Hoover Automotive of Summerville, S.C.; and John O'Neil Johnson Toyota of Meridian, Miss.

Terms of the settlement were not available on Wednesday.

Reynolds and the dealership groups filed the initial agreement in principle on Friday in the U.S. District Court for Northern District of Illinois, where antitrust litigation against Reynolds and CDK has been consolidated.

The litigation against Reynolds and CDK alleges the two companies have fixed prices and been in general collusion to reduce competition and control the dealership management system market. Together, the two firms have more than 70 percent of the DMS market.

The proposed settlement between Reynolds and the dealership groups also does not involve other non-dealership plaintiffs that have filed antitrust litigation. Those plaintiffs include competing vendor companies such as Cox Automotive, Authenticom, Motor Vehicle Software Corp. and Autoloop, whose similar cases have been consolidated as part of multidistrict litigation alleging unfair conduct by Reynolds and CDK.

The settlement is subject to execution of a formal agreement and has yet to be approved by the court.

Source URL: <https://www.autonews.com/article/20181003/RETAIL07/181009839/dealers-agree-to-settle-with-reynolds-in-antitrust-suit>

66th LEGISLATURE 2019 SESSION

Additional Documents

Business Page

Proxies

Roll Call

Witness Statements

**Standing Committee
Reports**

Informational items

Visitor Registrations

Table Bills

Any Document or

Fiscal reports

material presented

Tabled Bills

after the meeting for

Roll Call Votes

**example@ petitions,
news clippings ectara.**

BUSINESS REPORT

**MONTANA SENATE
66th LEGISLATURE - REGULAR SESSION**

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Tuesday, March 19, 2019

Place: Capitol

Time: 8:30 AM

Room: 422

BILLS and RESOLUTIONS HEARD:

HB 617 - Generally revise franchise laws and automobile franchise laws -
Rep. Barry Usher (R)

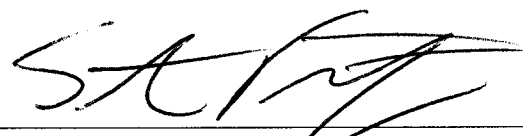
SB 325 - Create the Montana Business Corporation Act -
Sen. Steve Fitzpatrick (R)

SB 330 - Authorize sports gambling act -
Sen. Mark Blasdel (R)

SR 43 - Confirm Governor's appointee for Director, Dept. of Commerce -
Sen. Steve Fitzpatrick (R)

EXECUTIVE ACTION TAKEN:

Comments:


A handwritten signature in black ink, appearing to read 'S. Fitzpatrick', is written over a horizontal line.

SEN. Steve Fitzpatrick, Chair

MONTANA STATE SENATE
ROLL CALL
BUSINESS, LABOR, AND
ECONOMIC AFFAIRS

DATE: March 19, 2019

NAME	PRESENT	ABSENT/ EXCUSED
Chairman Fitzpatrick	✓	
Senator Brown	✓	
Senator Malek	✓	
Senator Boland	✓	
Senator Ellsworth	✓	
Senator Gauthier	✓	
Senator Small	✓	
Senator Smith	✓	
Senator Vance	✓	
Senator Vuckovich	✓	

10 Committee Members

MONTANA STATE SENATE

Visitors Register

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Tuesday, March 19, 2019

SB 325 - Create the Montana Business Corporation Act

Sponsor: Sen. Steve Fitzpatrick (R)

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Sponsor: **Sen. Steve Fitzpatrick (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Sponsor: Rep. Barry Usher (R)

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Sponsor: Sen. Mark Blasdel (R)

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE 66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on March 27, 2019 at 8:30 AM, in Room 422 Capitol

ROLL CALL

Members Present:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Dee Brown, Vice Chair (R)
Sen. Sue Malek, Vice Chair (D)
Sen. Carlie Boland (D)
Sen. Jason W. Ellsworth (R)
Sen. Terry Gauthier (R)
Sen. Jason D. Small (R)
Sen. Frank Smith (D)
Sen. Gordon Vance (R)
Sen. Gene Vuckovich (D)

Members Excused: None

Members Absent: None

Staff Present: Linda Keim, Committee Secretary
Jameson Walker, Legislative Services Division

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 351, 3/25/2019; SB 358, 3/26/2019

Executive Action: SB 351, SB 358, Do Pass As Amended;
HB 481, HB 617, Be Concurred In As Amended
HB 584, Be Concurred In

08:32:15 Chairman Fitzpatrick

HEARING ON SB 351

Opening Statement by Sponsor:

08:33:32 Sen. Jason Ellsworth (R), SD 43, opened the hearing on SB 351. Revise State Fund board composition and term requirements.

EXHIBIT(bus63a01)

Proponents' Testimony: None

Opponents' Testimony:

08:34:44 Kevin Braun, Montana State Fund (MSF)

Informational Testimony: None

Questions from Committee Members and Responses:

08:35:52 Sen. Brown
08:35:56 Sen. Ellsworth
08:37:01 Sen. Malek
08:40:08 Mr. Braun, MSF
08:40:46 Sen. Malek
08:42:18 Sen. Ellsworth defer
08:42:34 Mr. Braun
08:43:04 Sen. Malek
08:43:16 Mr. Braun
08:43:26 Chairman Fitzpatrick
08:44:06 Mr. Braun
08:44:12 Sen. Boland
08:45:13 Mr. Braun
08:45:34 Sen. Brown
08:45:38 Mr. Braun

Closing by Sponsor:

08:46:06 Sen. Ellsworth

08:46:34 Chairman Fitzpatrick

HEARING ON SB 358

Opening Statement by Sponsor:

08:46:51 Sen. Terry Gauthier (R), SD 40, opened the hearing on SB 358. Revise resort area alcoholic beverage license laws.

Proponents' Testimony:

08:49:18 John Iverson, Montana Tavern Association (MTA)
08:52:08 Mark Taylor, attorney, Spanish Peaks and Moonlight Basin

Opponents' Testimony: None

Informational Testimony:

08:53:08 Shauna Helfert, deputy director, Department of Revenue (DOR)

Questions from Committee Members and Responses:

08:53:43 Sen. Boland
 08:55:59 Mr. Iverson, MTA
 08:56:10 Sen. Boland
 08:58:57 Ms. Helfert, DOR
 08:59:01 Chairman Fitzpatrick
 08:59:37 Mr. Iverson
 09:00:18 Sen. Boland
 09:00:23 Mr. Iverson
 09:03:13 Sen. Brown
 09:04:23 Sen. Gauthier
 09:04:48 Sen. Malek
 09:05:29 Ms. Helfert
 09:05:50 Sen. Brown
 09:06:33 Ms. Helfert
 09:06:52 Sen. Brown
 09:07:55 Mr. Iverson
 09:09:08 Chairman Fitzpatrick
 09:12:10 Ms. Helfert
 09:12:14 Sen. Boland
 09:12:58 Ms. Helfert

Closing by Sponsor:

09:14:15 Sen. Gauthier

Committee Business:

09:15:46 Chairman Fitzpatrick
 09:19:13 Sen. Brown
 09:19:28 Chairman Fitzpatrick

 09:20:03 Recess
 09:45:36 Reconvened

EXECUTIVE ACTION ON SB 351

09:45:53 **Motion:** Sen. D. Brown moved that **SB 351 DO PASS.**

09:46:04 **Motion/Vote:** Sen. D. Brown moved that **SB 351 BE AMENDED.** Motion carried unanimously by voice vote. (see exhibit 1)

09:46:38 **Motion:** Sen. D. Brown moved that **SB 351 DO PASS AS AMENDED.**

09:46:53 **Motion:** Sen. Malek moved that **SB 351 BE CONCEPTUALLY AMENDED.**

Discussion:

09:48:21 Chairman Fitzpatrick
 09:48:23 Sen. Brown

09:48:29 Chairman Fitzpatrick
09:49:17 Sen. Malek
09:49:50 Chairman Fitzpatrick

09:50:08 **Vote:** Motion carried 9-1 by roll call vote with Sen. D. Brown voting no.

09:51:16 **Motion/Vote:** Sen. D. Brown moved that **SB 351 DO PASS AS AMENDED**.
Motion carried 9-1 by voice vote with Sen. D. Brown voting no.

EXECUTIVE ACTION ON SB 358

09:52:55 **Motion:** Sen. D. Brown moved that **SB 358 DO PASS**.

09:53:06 **Motion:** Sen. D. Brown moved that **SB 358 BE CONCEPTUALLY AMENDED**.

Discussion:

09:53:36 Chairman Fitzpatrick
09:54:01 Jameson Walker, Legislative Services Division (LSD)
09:54:27 Sen. Brown
09:54:39 Sen. Boland
09:55:05 Mr. Walker, LSD
09:56:03 Sen. Malek
09:56:27 Mr. Walker
09:57:23 Sen. Smith

09:57:46 **Vote:** Motion carried 6-4 by roll call vote with Sen. Fitzpatrick, Sen. Gauthier, Sen. Malek and Sen. F. Smith voting no.

09:58:50 **Motion/Vote:** Sen. D. Brown moved that **SB 358 DO PASS AS AMENDED**.
Motion carried 8-2 by roll call vote with Sen. D. Brown and Sen. Vance voting no.

EXECUTIVE ACTION ON HB 481

10:00:12 **Motion:** Sen. D. Brown moved that **HB 481 BE CONCURRED IN**.

10:02:15 **Motion/Vote:** Sen. D. Brown moved that **HB 481 BE AMENDED**. Motion carried unanimously by roll call vote.

EXHIBIT(bus63a02)

10:02:14 **Motion:** Sen. Fitzpatrick moved that **HB 481 BE AMENDED**.

EXHIBIT(bus63a03)

Discussion:

10:02:19 Sen. Ellsworth
10:04:01 Sen. Brown
10:05:32 Sen. Ellsworth
10:05:45 Sen. Malek
10:07:34 Sen. Smith
10:07:58 Chairman Fitzpatrick

10:08:20 Sen. Boland

10:08:58 Sen. Malek

10:10:03 **Vote:** Motion carried 6-4 by roll call vote with Sen. Boland, Sen. Malek, Sen. F. Smith and Sen. Vuckovich voting no.

10:11:09 **Motion:** Sen. Fitzpatrick moved that **HB 481 BE AMENDED.**

EXHIBIT(bus63a04)

Discussion:

10:11:22 Sen. Brown

10:12:00 Mr. Walker

10:12:32 Chairman Fitzpatrick

10:12:42 Mr. Walker

10:13:28 Sen. Brown

10:14:42 Sen. Malek

10:17:20 Mr. Walker

10:17:52 **Vote:** Motion carried 6-4 by roll call vote with Sen. Boland, Sen. Small, Sen. F. Smith and Sen. Vance voting no.

10:19:04 **Motion:** Sen. D. Brown moved that **HB 481 BE CONCURRED IN AS AMENDED.**

Discussion:

10:19:29 Chairman Fitzpatrick

10:19:38 Sen. Malek

10:19:58 Sen. Brown

10:20:46 Sen. Boland

10:21:10 **Vote:** Motion carried 8-2 by roll call vote with Sen. Boland and Sen. F. Smith voting no. Sen. Malek will carry the bill.

EXECUTIVE ACTION ON HB 584

10:22:24 **Motion/Vote:** Sen. D. Brown moved that **HB 584 BE CONCURRED IN.** Motion carried 6-4 by roll call vote with Sen. D. Brown, Sen. Malek, Sen. F. Smith and Sen. Vance voting no. Sen. Fitzpatrick will carry the bill.

DISCUSSION ON HB 617

10:23:56 Chairman Fitzpatrick

10:24:39 Jameson Walker, Legislative Services Division (LSD)

EXHIBIT(bus63a05)

10:25:36 Chairman Fitzpatrick

10:25:52 Sen. Vance

Public Introductions:

10:26:20 Joe Billion, dealer, Billion Auto Group, Bozeman

10:26:40 Craig Charleton, attorney, Montana Automobile Dealers Association (MTADA)
10:26:58 Mayer Grashin, CDK Global
10:27:15 John Bruggeman, chief strategy officer, V2, Whitefish

10:27:58 Chairman Fitzpatrick
10:28:02 Sen. Ellsworth

Amendment HB061701.AJW

Discussion:

10:28:18 Chairman Fitzpatrick

[EXHIBIT\(bus63a06\)](#)

10:29:08 Sen. Brown
10:30:01 Mr. Walker, LSD

Proponents' and Opponents' Testimony:

10:30:27 John MacDonald, Alliance of Automobile Manufacturers (AAM)
10:33:40 Jim Stanger, auto dealer, Helena

Questions from Committee Members and Responses:

10:35:10 Sen. Brown
10:35:43 Mr. MacDonald, AAM
10:36:50 Sen. Brown
10:38:17 Mr. Stanger, Helena
10:39:17 Sen. Gauthier
10:40:38 Mr. Stanger

Amendment HB061702.AJW

Discussion:

10:40:50 Chairman Fitzpatrick

[EXHIBIT\(bus63a07\)](#)

10:41:06 Mr. Walker
10:44:35 Chairman Fitzpatrick

Proponents' and Opponents' Testimony:

10:44:42 Mr. Grashin, CDK

[EXHIBIT\(bus63a08\)](#)

10:51:05 Mr. Billion, Bozeman

[EXHIBIT\(bus63a09\)](#)

10:56:18 Mr. Stanger

[EXHIBIT\(bus63a10\)](#)

10:57:20 John Brueggeman, V2

Questions from Committee Members and Responses:

10:58:07 Sen. Ellsworth
10:59:33 Mr. Grashim
10:59:57 Sen. Vance
11:01:03 Mr. Billion
11:01:20 Sen. Brown
11:05:47 Mr. Billion

Amendment HB061703.AJW

Discussion:

11:06:28 Chairman Fitzpatrick

[EXHIBIT\(bus63a11\)](#)

11:06:51 Mr. Walker
11:12:15 Sen. Brown
11:12:38 Mr. Walker

Proponents' and Opponents' Testimony:

11:13:02 Bruce Knudsen, executive vice president, Montana Automobile Dealers
Association (MTADA)
11:14:02 Mr. MacDonald

Questions from Committee Members and Responses:

11:15:03 Sen. Ellsworth
11:15:36 Mr. MacDonald
11:16:32 Sen. Vance
11:16:45 Mr. MacDonald
11:16:53 Sen. Vance
11:17:01 Mr. Knudsen, MTADA

Amendment HB061704.AJW

Discussion:

11:18:20 Chairman Fitzpatrick

[EXHIBIT\(bus63a12\)](#)

11:19:00 Mr. Walker
11:19:45 Chairman Fitzpatrick

Proponents' and Opponents' Testimony:

11:20:08 Mr. Charlton, MTADA
11:21:13 John MacDonald, AAM

Questions from Committee Members and Responses:

11:22:23 Sen. Brown
11:23:30 Mr. Charlton
11:23:39 Sen. Vance
11:23:52 Chairman Fitzpatrick

Sen. Small was excused.

EXECUTIVE ACTION ON HB 617

11:24:29 **Motion:** Sen. D. Brown moved that **HB 617 BE CONCURRED IN.**

11:24:37 **Motion:** Sen. D. Brown moved that **HB 617 BE AMENDED.** (See Exhibit 11, HB061703.AJW)

Discussion:

11:25:11 Sen. Vance
11:25:32 Sen. Ellsworth
11:25:48 Sen. Gauthier

11:25:59 **Vote:** Motion carried unanimously by voice vote. Sen. Small voted by proxy.

11:26:19 **Motion:** Sen. D. Brown moved that **HB 617 BE AMENDED.** (See Exhibit 6, HB061701.AJW)

Discussion:

11:26:34 Sen. Vance
11:27:01 Chairman Fitzpatrick

11:27:12 **Vote:** Motion failed 1-9 by voice vote with Sen. D. Brown voting aye. Sen. Small voted by proxy.

11:28:03 **Motion:** Sen. Fitzpatrick moved that **HB 617 BE AMENDED.** (See Exhibit 7, HB061702.AJW)

Discussion:

11:28:21 Sen. Vance

11:28:49 **Vote:** Motion failed unanimously by roll call vote. Sen. Small voted by proxy.

11:29:41 **Motion:** Sen. Fitzpatrick moved that **HB 617 BE AMENDED.** (See Exhibit 12, HB061704.AJW)

Discussion:

11:29:58 Sen. Vance
11:30:09 Chairman Fitzpatrick

11:30:15 **Vote:** Motion failed 2-8 by voice vote with Sen. Malek and Sen. Vance voting aye. Sen. Small voted by proxy.

Discussion:

11:30:38 Sen. Malek
11:30:48 Mr. Walker
11:31:01 Chairman Fitzpatrick

11:31:11 **Motion:** Sen. D. Brown moved that **HB 617 BE CONCURRED IN AS AMENDED.**

Discussion:

11:31:40 Sen. Vance

11:32:05 Sen. Brown

11:32:08 **Vote:** Motion carried unanimously by voice vote. Sen. Small voted by proxy.
Sen. Vance will carry the bill.

Committee Business:

11:32:36 Chairman Fitzpatrick

11:31:46 Sen. Brown

11:33:46 Chairman Fitzpatrick

ADJOURNMENT

Adjournment: 11:33 AM

Linda Keim, Secretary

lk

Additional Documents:

Additional Documents:

EXHIBIT([bus63aad.pdf](#))

66th LEGISLATURE 2019 SESSION

Additional Documents

Business Page

Proxies

Roll Call

Witness Statements

Standing Committee
Reports

Informational items
Visitor Registrations

Table Bills

Any Document or
material presented
after the meeting for
example@ petitions,
news clippings ectara.

Fiscal reports

Tabled Bills

Roll Call Votes

BUSINESS REPORT

**MONTANA SENATE
66th LEGISLATURE - REGULAR SESSION**

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Wednesday, March 27, 2019

Place: Capitol

Time: 8:30 AM

Room: 422

BILLS and RESOLUTIONS HEARD:

SB 351 - Revise State Fund board composition and term requirements - Sen. Jason Ellsworth (R)

SB 358 - Revise resort area alcoholic beverage license laws - Sen. Terry Gauthier (R)

EXECUTIVE ACTION TAKEN:

SB 351, SB 358: Do Pass As Amended
HB 481, HB 617: Be Concurred In As Amended
HB 584: Be Concurred In

Comments:



SEN. Steve Fitzpatrick, Chair

MONTANA STATE SENATE
ROLL CALL
BUSINESS, LABOR, AND
ECONOMIC AFFAIRS

DATE: March 27, 2019

NAME	PRESENT	ABSENT/ EXCUSED
Chairman Fitzpatrick	✓	
Senator Brown	✓	
Senator Malek	✓	
Senator Boland	✓	
Senator Ellsworth	✓	
Senator Gauthier	✓	
Senator Small	✓	
Senator Smith	✓	
Senator Vance	✓	
Senator Vuckovich	✓	

10 Committee Members



SENATE STANDING COMMITTEE REPORT

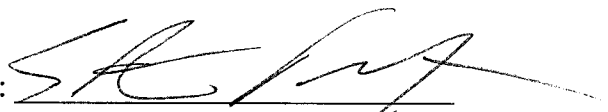
March 27, 2019

Page 1 of 1

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 351** (first reading copy -- white) **do pass as amended.**

Signed:


Senator Steve Fitzpatrick, Chair

And, that such amendments read:

1. Page 1, line 27.

Strike: "February"

Insert: "April"

2. Page 1, line 28.

Strike: "January"

Insert: "March"

Following: "31."

Insert: "The governor shall appoint board members on or before February 1 of the odd-numbered years that coincide with the expiration of the board members' terms."

3. Page 1, line 30 through page 2, line 1.

Strike: Page 1, line 30 through page 2, line 1 in their entirety

4. Page 2, line 3.

Following: "except"

Insert: "as otherwise provided in this section and except"

- END -

Committee Vote:

Yes 9, No 1

Fiscal Note Required ☐

SB0351001SC.slk



SENATE STANDING COMMITTEE REPORT

March 27, 2019

Page 1 of 1

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 358**

(first reading copy -- white) **do pass as amended.**

Signed:

A handwritten signature in black ink, appearing to read "Steve Fitzpatrick".
Senator Steve Fitzpatrick, Chair

And, that such amendments read:

1. Page 3, line 10.

Following: "licenses issued under this section"

Insert: "and is more than 30 miles from an agency liquor store"

- END -

Committee Vote:

Yes 8, No 2

Fiscal Note Required ☐

SB0358002SC.slk



SENATE STANDING COMMITTEE REPORT

March 27, 2019

Page 1 of 2

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **House Bill 481** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____

Senator Steve Fitzpatrick, Chair

To be carried by Senator Sue Malek

And, that such amendments read:

1. Title, page 1, line 6.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING APPLICABILITY DATES"

2. Page 2, line 3.

Following: "contemplated by this section"

Insert: ": (i)"

3. Page 2, line 4.

Following: "50-40-103"

Insert: ";

(ii) complies with section 403.3 of the 2012 International Mechanical Code of Montana relating to ventilation of buildings and outdoor airflow rates;

(iii) is not located in the same building used by a place of work and is not located in a building used by the public; and

(iv) does not allow people under 21 years of age in the private social club."

4. Page 2, line 5.

Following: line 4

Insert: "NEW SECTION. Section 2. Applicability. (1) [This act] requires bona fide private social clubs that go into

Committee Vote:

Yes 8, No 2

Fiscal Note Required ☐

operation on or after [the effective date of this act] to comply with the 2012 International Mechanical Code of Montana relating to ventilation of buildings as of [the effective date of this act]. Bona fide private social clubs in existence before [the effective date of this act] must comply with the 2012 International Mechanical Code of Montana by October 1, 2022."

(2) [This act] requires bona fide private social clubs that go into operation on or after [the effective date of this act] to comply with 50-40-104(4)(f)(iii). Bona fide private social clubs in operation before [the effective date of this act] may continue operating in the same location that was in operation before [the effective date of this act]. However, a bona fide private social club in operation before [the effective date of this act] that changes locations must comply with 50-40-104(4)(f)(iii).

- END -



SENATE STANDING COMMITTEE REPORT

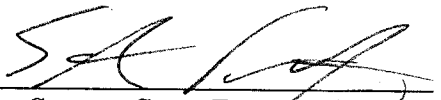
March 27, 2019

Page 1 of 1

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **House Bill 584**
(third reading copy -- blue) **be concurred in.**

Signed:


Senator Steve Fitzpatrick, Chair

To be carried by Senator Steve Fitzpatrick

- END -

Committee Vote:

Yes 6, No 4

Fiscal Note Required ☐

HB0584001SC12595.slk



SENATE STANDING COMMITTEE REPORT

March 27, 2019

Page 1 of 3

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **House Bill 617**
(third reading copy -- blue) **be concurred in as amended.**

Signed: _____

Senator Steve Fitzpatrick, Chair

To be carried by Senator Gordon Vance

And, that such amendments read:

1. Page 4, line 19.

Strike: "labor"

2. Page 4, line 27 through line 30.

Strike: subsection (b) in its entirety

Renumber: subsequent subsections

3. Page 5, line 26 through line 27.

Following: "in accordance with subsection"

Insert: "(2) or"

Following: "(3)"

Strike: "or this subsection"

4. Page 6, line 1.

Strike: "subsection (1)(a)"

Insert: "this section"

5. Page 6, line 16.

Strike: "or labor performed"

6. Page 6, line 27 through line 28.

Strike: ", based on the qualified repair" on line 27 through
"franchisee" on line 28

Committee Vote:

Yes 10, No 0

Fiscal Note Required ☐

7. Page 7, line 18.
Strike: ", or submittable,"
8. Page 9, line 26.
Strike: "chronological"
Insert: "time"
9. Page 11, line 27.
Following: "cancellation,"
Insert: "including vehicles with less than 1,000 miles on the odometer,"
10. Page 12, line 7.
Following: "cancellation"
Insert: ", including vehicles with less than 1,000 miles on the odometer"
11. Page 12, line 15.
Following: "30 days"
Insert: "from the date of the repurchase request"
12. Page 14, line 18.
Strike: "the rate of 15% a year"
Insert: "a rate calculated pursuant to 25-9-205"
13. Page 14, line 29.
Following: "~~not covered by contract,~~"
Insert: "parts,"
14. Page 14, line 30.
Following: "special tools"
Insert: "that are not included in contract remedies"
15. Page 15, line 9.
Following: "120 days"
Strike: "of"
Insert: "prior to"
Following: "date of retirement or"
Insert: "within 120 days after"
16. Page 15, line 16 through 17.
Following: "requirements to be a dealer"
Strike: "or shall employ"
Insert: ". If the designated family member lacks experience required to meet those requirements, then the manufacturer shall allow the successor a reasonable amount of time to meet those requirements provided that during the period, the successor employs"

17. Page 16, line 23.

Following: "61-4-132(2)"

Strike: "and"

Insert: "or"

18. Page 16, line 25.

Strike: "pursuant to 61-4-206 and 61-4-207"

19. Page 18, line 5.

Strike: "thorough"

Insert: "reasonable"

20. Page 18, line 7.

Following: "to the claimant"

Insert: "or manufacturer"

21. Page 18, line 16.

Strike: "pursuant" through "part"

22. Page 18, line 17.

Strike: "warranty,"

23. Page 18, line 18.

Following: "receipt of the claim from the dealer"

Insert: ", unless the claim is properly disapproved"

24. Page 20, line 4.

Strike: "this section"

Insert: "27-2-203"

25. Page 21, line 1.

Following: "franchisor"

Strike: "in a 3-calendar-year period"

Insert: "within 3 calendar years of the date of final disposition
of a notice of intention"

26. Page 26, line 3 through line 5.

Following: "products of the line-make" on line 3

Strike: remainder of line 3 through "that community" on line 5

27. Page 26, line 6.

Following: "whether the"

Strike: "population and"

Following: "demographic characteristics"

Insert: ", including population,"

- END -

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO SB335 MOTION NO. _____
 MOTION: _____

~~R~~ *Conceptual 9-1*

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN		✓	
SENATOR SUE MALEK	✓		
SENATOR CARLIE BOLAND	✓		
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH	✓		
SENATOR GORDON VANCE	✓		
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO SB358 MOTION NO. _____
 MOTION: _____

Conceptual

6-4

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN	✓		
SENATOR SUE MALEK		✓	
SENATOR CARLIE BOLAND	✓		
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER		✓	
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH		✓	
SENATOR GORDON VANCE	✓		
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK		✓	

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO SB 358 MOTION NO. _____
MOTION: _____

8-2

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN		✓	
SENATOR SUE MALEK	✓		
SENATOR CARLIE BOLAND	✓		
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH	✓		
SENATOR GORDON VANCE		✓	
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO HB481 MOTION NO. _____
MOTION: _____

amdt SB048104.ajw

10-0

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN	✓		
SENATOR SUE MALEK	✓		
SENATOR CARLIE BOLAND	✓		
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH	✓		
SENATOR GORDON VANCE	✓		
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO HB481 MOTION NO. _____
MOTION: _____

Amnt SB 048102, a w

6-4

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN	✓		
SENATOR SUE MALEK		✓	
SENATOR CARLIE BOLAND		✓	
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH		✓	
SENATOR GORDON VANCE	✓		
SENATOR GENE VUCKOVICH		✓	
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/22/19 BILL NO. HB481 MOTION NO. _____
 MOTION: _____

and SB048103.ajw
6-4

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN	✓		
SENATOR SUE MALEK	✓		
SENATOR CARLIE BOLAND		✓	
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL		✓	
SENATOR FRANK SMITH		✓	
SENATOR GORDON VANCE		✓	
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO. HB481 MOTION NO. _____
MOTION: _____

BCIA

8-2

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN	✓		
SENATOR SUE MALEK	✓		
SENATOR CARLIE BOLAND		✓	
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH		✓	
SENATOR GORDON VANCE	✓		
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 12/27/19 BILL NO HB584 MOTION NO. _____
MOTION: _____

BCE 6-0

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN		✓	
SENATOR SUE MALEK		✓	
SENATOR CARLIE BOLAND	✓		
SENATOR JASON ELLSWORTH	✓		
SENATOR TERRY GAUTHIER	✓		
SENATOR JASON SMALL	✓		
SENATOR FRANK SMITH		✓	
SENATOR GORDON VANCE		✓	
SENATOR GENE VUCKOVICH	✓		
CHAIRMAN STEVE FITZPATRICK	✓		

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 3/27/19 BILL NO HB617 MOTION NO. _____
 MOTION: _____

amd 61702 Q-10

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIR DEE BROWN		✓	
SENATOR SUE MALEK		✓	
SENATOR CARLIE BOLAND		✓	
SENATOR JASON ELLSWORTH		✓	
SENATOR TERRY GAUTHIER		✓	
SENATOR JASON SMALL		✓	<i>pr</i>
SENATOR FRANK SMITH		✓	
SENATOR GORDON VANCE		✓	
SENATOR GENE VUCKOVICH		✓	
CHAIRMAN STEVE FITZPATRICK		✓	

SENATE PROXY

I, Senator Jason Small, hereby authorize Senator Terry Gauthier to vote my proxy before the Senate Business & Labor meeting held on 3-27-2019, 2019.

Gas Small
Senator Signature

3-27-2019
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]



March 26, 2019

Dear Chairman Fitzpatrick and Members of the Senate Business, Labor, and Economic Committee:

On behalf of the American Consumer Institute, a nonprofit educational and research organization representing the interests of millions of consumers, I am writing you today because of our concerns with House Bill 617, which proposes to regulate large-scale auto industry enterprise computer systems and to rewrite dealer franchise agreements. We believe that this legislation would enable consumer data to be put at risk and contrary to fundamental property rights, and violates both the Montana and U.S. Constitutions. It is our judgment that House Bill 617 is anti-consumer, it would undoubtedly and substantially put the private data of consumers at risk, and it would broadly increase vehicle prices and consumer costs.

Dealer Management Systems (DMSs) have become a key computing system that that dealers use for sales, service, finance, inventory, accounting operations and other purposes. DMSs are responsible for ensuring that all data stored on the system, regardless of source, is secure. These systems contain personally identifiable information of consumers, potentially including their names, addresses, phone numbers, Social Security numbers, employment data, purchase history, financial information and other private information that needs protection from the general public, hackers, data brokers, vendors and marketing firms, and other third-parties.

House Bill 617 would require dealer management systems to permit system access to anyone designated by a dealer, without regard to that person's technical competence, ethical values or criminal history, or commitment to utilize the data in ways that do not harm other DMS participants (e.g., auto manufacturers, lenders and consumers). It would not prohibit the resale or secondary use of personal data by "authorized" third-parties; it would not require consumer notification if and when their personal data has been used; and it would not prohibit unauthorized access, collection or retention of consumer data by "authorized" third-parties. In effect, the bill would legalize data breaches of personally identifiable information. Consumers deserve better.

It is axiomatic that every access point into a network is also an access point for hackers and malware, and that each access point increases risk not only to the network but to every participant in the network. Absent clear evidence of social good (which has not been presented in support of this legislation), government regulations mandating unfettered access to otherwise secure networks that carry proprietary, financial and sensitive consumer data will irrationally and unnecessarily put millions of Montana consumers at risk of data breaches and theft.

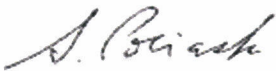
Additionally, DMS software is copyrighted content. The U.S. Constitution and Title 17 of the United States Code grants ownership in intellectual property as an incentive to creators, including software developers and publishers. A government mandate of who gets access to copyrighted content, particularly for commercial reason, undermines the value of copyrights and the value of the publishers' property, and is likely an unconstitutional taking.

Lastly, House Bill 617, while assuming that automakers will not fairly compensate their dealers for performing warranty repairs, actually provides an incentive for dealers to increase the price of parts and labor on RETAIL consumers (i.e., consumers who seek repairs not covered under warranty). Automakers would be compelled to pay dealers these higher labor rates and parts markups on their warranty claims. Federal court cases, studies and attorney advertising show that laws like this one have resulted in as much as a 90% markup on parts on retail consumers. Automakers ultimately pass these higher costs onto consumers. In fact, new vehicle buyers overpay by nearly \$50 billion due to these protectionist laws.¹ This finding is consistent with analysis done by the Federal Trade Commission.²

In our free market system, dealers are free to choose DMSs that offer different prices and features, including different security features, and dealers can also choose to create their own systems. The free market also allows dealers and manufacturers to contract in mutually beneficial ways through negotiations. House Bill 617 is government over-regulation – it interferes with private contracts, will raise costs for Montana automobile purchasers and it puts consumers private data in jeopardy – all with no evident benefit to Montana citizens. In enacted, consumers will pay more for less.

I urge the Chair and members of the committee to consider these issues and act in the best interests of Montana consumers, and in accordance with constitutionally protected property rights.

Respectfully,



Steve Pociask
President / CEO
American Consumer Institute
1701 Pennsylvania Avenue, NW, Suite 200
Washington, DC 20006
Steve@TheAmericanConsumer.Org

¹ Steve Pociask, "Corporate Welfare: How Automobile Dealership Franchise Regulations Cost Consumers an Additional \$48 billion Annually," American Consumer Institute, 2018, available at <https://www.theamericanconsumer.org/wp-content/uploads/2018/03/ConsumerGram-2018-FINAL-1.pdf>.

² Ibid, at fn. 16.

March 26, 2019

TO: Chairman Fitzpatrick and Members of the Senate Business & Labor Committee

RE: HB 617: Fundamental Legal and Constitutional Problems

On behalf of CDK Global and Reynolds & Reynolds, two leading providers of Dealer Management Systems (DMSs) nationwide and in Montana, this brief memorandum outlines serious concerns about the legality and constitutionality of HB 617. If the Committee wishes, additional legal research can be undertaken and supporting documentation can be provided.

Background

DMSs are enterprise-level computing systems that process and house sensitive data provided by auto manufacturers, consumers, financial institutions, warranty and insurance companies, application publishers and local governments.

HB 617¹ requires “dealer data vendors” – that is, DMS Providers – to allow unlicensed third-parties to access privately-owned DMSs, without payment and over Providers’ express objections, and without any limits on what the third-parties can do with the data. Legislation mandating unfettered access to these systems risks exposing an enormous quantity of data – including consumer credit scores, and proprietary pricing data – to breach and dissemination.

HB 617 Violates the Montana and U.S. Constitutions

The Contracts Clauses of the U.S. and Montana Constitutions² void any laws that impair the obligation of contracts. HB 617 would obliterate at least three categories of carefully-negotiated contract provisions that exist in current DMS contracts. These provisions:

- Prohibit dealerships from granting DMS access without the DMS Provider’s express permission;
- Require DMS Providers to ensure the security of data provided by financial institutions, credit reporting agencies, auto manufacturers and others; and
- Require payment by application vendors for integration services offered by DMS Providers.

In at least two ways HB 617 violates the federal Takings Clause³, which prohibits Federal or State Governments from taking private property without just compensation.

- First, HB 617 permits unlicensed third parties to physically take data created and maintained by DMS providers on their proprietary systems, while barring those providers from seeking compensation (or other contractual protections) in return.⁴
- Second, HB 617 diminishes the value of the DMS (which is valuable intellectual and physical property) by requiring Providers to grant free access to those systems. The

¹ H.B. 617, 66th Legis., 2019 Sess. (Mont. 2019).

² U.S. Const. art. I, § 10, cl. 1; Mont. Const. art. II, § 31.

³ U.S. Const. amend. V; see Mont. Const. art. II, § 29.

⁴ See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

minimal (if any) social benefit associated with this taking does not pass constitutional muster.⁵

HB 617 also violates the U.S. Constitution Commerce Clause⁶ (specifically the so-called “dormant Commerce Clause”) by imposing state-specific rules on products and services licensed nationwide that offer very little benefit locally as compared to the very substantial burdens these rules impose.⁷

HB 617 Undercuts Several Federal Laws

Congress has enacted the U.S. Copyright Act, Digital Millennium Copyright Act, and Defend Trade Secrets Act to provide and protect proprietary interests in creative and innovative products like DMSs. By requiring DMS providers to open their systems to uncompensated third-party access HB 617 works at cross purposes with these federal laws and is therefore void under the doctrine of implied conflict preemption. The same is true of the federal Computer Fraud and Abuse Act, which creates a federal right that is violated whenever a computer system is accessed without the system owner’s authorization. HB 617 would violate this right squarely, and federal preemption is therefore even more patent and direct.

Thank you for your consideration of these fundamental legal concerns. If the Committee wishes, more research can be undertaken or supporting documentation can be provided.

⁵ See *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978)

⁶ U.S. Const. art. I, § 10.

⁷ *Pike v. Bruce Church Inc.*, 397 U.S. 137 (1970).



March 26, 2019

The Honorable Steve Fitzpatrick
1301 East Sixth Avenue
State Capitol
Helena, MT 59620-8201

Dear Chairman Fitzpatrick and Members of the Senate Business & Labor Committee:

Our organizations, the Institute for Liberty and Capitol Allies, have been defending Americans' right to be free for well over a decade. We promote and defend Americans' personal freedoms and free markets, including freedom to own and operate a business, freedom to contract and freedom from government interference. We write today because we are concerned that a bill pending in the Senate, HB 617, offends so many of the liberties we believe in.

HB 617 would snatch from the owners of automobile industry computer networks the right to control their own network. The bill literally would tell private companies built with billions of dollars of private capital that they no longer control their own assets or decide with whom they do business. And after forcing open these high-powered computer networks that store, process and transmit billions of sensitive consumer, financial and business data files, this bill shields from liability certain bad actors if government-gifted access to the network results in a data breach, or even worse results in a virus that corrupts the data and crashes the network.

We would be outraged if a private business had, by legislative fiat, its assets seized by the government and redistributed to the general public. Why is the Montana legislature essentially seizing private computer networks and making them available to a special class of citizens? Would the legislature gift access to private ranches or homes by legislative fiat?

HB 617 violates every basic notion of property rights, intellectual property rights and limited government. It violates Article II, Sections 3, 17, 29, and 31 of the Montana Constitution relating to Inalienable Rights, Due Process, Takings, and the Obligations of Contracts and Grant of Privileges. And its obligations are contrary to virtually every public official's mission of protecting business data, financial data and Montana citizens' sensitive personal data.

We are confounded that this bill passed the Montana House of Representatives and urge the Senate to defeat this bill and keep it far away from the Governor's desk.

Sincerely,

Andrew Langer, President
Institute for Liberty

Jerry Rogers, President and Founder
Capitol Allies